CRAWFORD, WISHNEW & LANG PLLC
Michael J. Lang
Texas State Bar No. 24036944
mlang@cwl.law
1700 Pacific Ave, Suite 2390
Dallas, Texas 75201
Telephone: (214) 817-4500

Counsel for Movants

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.	Case No. 19-34054 (SGJ)
Debtor.	

JAMES DONDERO, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., NEXPOINT ADVISORS, L.P., THE DUGABOY INVESTMENT TRUST, GET GOOD TRUST, and NEXPOINT REAL ESTATE PARTNERS, LLC, F/K/A HCRE PARTNERS, LLC, A DELAWARE LIMITED LIABILITY COMPANY'S AMENDED MOTION FOR FINAL APPEALABLE ORDER AND SUPPLEMENT TO MOTION TO RECUSE PURSUANT TO 28 U.S.C. § 455 AND BRIEF IN SUPPORT

Pursuant to 28 U.S.C. § 455 and FEDERAL RULE OF BANKRUPTCY PROCEDURE 5004, Defendants James Dondero ("Mr. Dondero"), Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., The Dugaboy Investment Trust, Get Good Trust, and NexPoint Real Estate Partners, LLC, f/k/a HCRE Partners, LLC, a Delaware limited liability company (collectively the "Affected Parties") (Mr. Dondero and the Affected Parties are collectively referred to herein as "Movants") file this *Amended Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455* and *Brief in Support* and, in support thereof, would respectfully show the Court as follows:

1. Movants previously sought to recuse the Presiding Judge (hereinafter, the "Court") in this bankruptcy proceeding (the "Bankruptcy") (the "Original Recusal Motion").[1]

2. As detailed in the Original Recusal Motion, 28 U.S.C. § 455 requires a judge to be recused if the judge "has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding," or when the court's "impartiality might reasonably be questioned."[2] This is true, even where the judge does not actually have personal bias or prejudice.[3] The provisions of section 455 afford separate, overlapping grounds for recusal.[4]

3. "[Recusal] claims are fact-driven, and as a result, the analysis of a particular section 455(a) claim must be guided, not by a comparison to similar situations addressed by prior jurisprudence, but rather by an independent examination of the unique facts and circumstances of the particular claim at issue."[5] The test for recusal is not whether the judge believes he or she is capable of impartiality or whether the judge possesses actual bias (or knows of grounds requiring recusal).[6] Instead, the test is whether the "'average person on the street who knows all the relevant facts of a case'" ***might reasonably question*** the judge's impartiality.[7] As Congress recognized when enacting section 455, litigants "ought not have to face a judge where there is a

[1] The Original Recusal Motion and Brief in Support (*see* Bankr. Dkt. No. 2060-2061), along with all allegations and arguments set forth therein, as well as all evidence referenced therein and attached thereto via Movants' Appendix (*see* Bankr. Dkt. No. 2062), are incorporated by reference into this Supplement as if fully set forth herein and attached hereto. References to **Exs. 1-30** and App'x. 0001-2719 refer to the exhibits included in the Appendix to the Original Recusal Motion.

[2] 28 U.S.C. § 455(a)-(b)(1).

[3] *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 850 (2001); *Andrade v. Chojnacki*, 338 F.3d 448, 454 (5th Cir. 2003).

[4] *Andrade*, 338 F.3d at 454.

[5] Bankr. Dkt. No. 2083 at 6.

[6] *See Burke v. Regolado*, 935 F.3d 960, 1054 (10th Cir. 2019) (citations omitted); *Liljeberg*, 486 U.S. at 805.

[7] *In re Kansas Pub. Employees Retirement Sys.*, 85 F.3d 1353, 1358 (8th Cir. 1996).

reasonable question of impartiality."[8] At its core, this statutory provision was "designed to promote public confidence in the impartiality of the judicial process."[9]

4. Importantly, litigants are entitled to a full and fair opportunity to make their case in an impartial forum—regardless of their history with that forum.[10] "Fundamental to the judiciary is the public's confidence in the impartiality of [its] judges and the proceedings over which they preside."[11] Thus, "justice must satisfy the appearance of justice."[12] For this reason, the Fifth Circuit has held that "[i]f the question of whether § 455(a) requires disqualification is a close one, the balance tips in favor of recusal."[13] Although "[t]he judge can himself decide whether the claim asserted is within § 455, if it is, then a disinterested judge must decide what the facts are."[14]

5. Notably, while "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion," the Supreme Court has held that predispositions developed during the course of a trial can suffice to demonstrate the requisite bias or prejudice if the opinions "***reveal such a high degree of favoritism or antagonism as to make fair judgment impossible***."[15]

6. Here, the Court denied the Original Recusal Motion (the "Original Recusal Order"). On appeal of the Original Recusal Order to the Northern District of Texas, Judge Kinkeade dismissed the appeal, holding that the Original Recusal Order was non-final and non-appealable.[16] In doing

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[8] H. Rep. No. 1453, 93rd Cong., 2d Sess. 1 (1974), reprinted in 1974 U.S. Code Cong. & Admin. News 6351, 6355.

[9] *In re Drexel Burnham Lambert Inc.*, 861 F.2d 1307, 1313 (2d Cir. 1988) (quoting H.R. Rep. No. 1453); *Liljeberg*, 486 U.S. at 859-60.

[10] *Miller v. Sam Houston State Univ.*, 986 F.3d 880, 893 (5th Cir. 2021) (citing *United States v. Jordan*, 49 F.3d 152, 155 (5th Cir. 1995)).

[11] *Id.*

[12] *Id.* (quoting *Offutt v. United States*, 348 U.S. 11, 14 (1954)).

[13] *In re Chevron U.S.A., Inc.*, 121 F.3d 163, 165 (5th Cir. 1997).

[14] *In re Parson*, No. 15-30080-BJH, 2018 WL 1452295, at *4 (Bankr. N.D. Tex. Mar. 22, 2018) (citing *In Levitt v. University of Texas*, 847 F.2d 221, 226 (5th Cir. 1988)).

[15] *Liteky v. United States*, 510 U.S. 540, 555 (1994) (citation omitted) (emphasis added).

[16] *See* **Ex. 34** (App'x. 2829-2842), Dkt. No. 39 in Cause No. 3:21-cv-00879-K, the Memorandum Opinion and Order,

so, Judge Kinkeade pointed to language in the Court's Original Recusal Order in which the Court expressly "reserve[d] the right to amend or supplement" its ruling.[17] Consequently, Movants have never had their arguments for recusal substantively considered by any appellate court.

7. Obtaining final appellate review of the Original Recusal Motion and Original Recusal Order is important, not only because this Court continues to preside over the underlying Bankruptcy proceedings, but also because there is a new, significant proceeding (that is in its nascent stages), where it is imperative for Movants to get fair and unbiased treatment. In particular, since the Court's Original Recusal Order, Marc S. Kirschner, as Trustee for the Litigation Sub-Trust ("Mr. Kirschner"), has filed a voluminous adversary proceeding against Mr. Dondero and several of the Movants, in which Mr. Kirschner seeks hundreds of millions of dollars of damages (the "Kirschner Litigation").[18] And the Court's appearance of bias has not dissipated in the wake of the Original Recusal Motion or Original Recusal Order.

8. Therefore, to preserve their record for appeal and to ensure that all potential grounds for recusal may be considered by an appellate court, Movants hereby supplement the Original Recusal Motion with the following additional examples of actions taken and statements made by the Court (several of which occurred following the filing of the Original Recusal Motion) to further support the relief requested in the Original Recusal Motion:

- On June 10, 2021, after Movants moved to withdraw the reference, the Court *sua sponte* recommended that Debtor file fraudulent transfer claims, suggesting that those might affect the reference from being withdrawn.[19]

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a true and correct courtesy copy of which is included in the Appendix to this Supplement.

[17] *Id.* at 2 (App'x. 2830); *see also* Bankr. Dkt. No. 2083 at 10-11.

[18] Many of the defendants in the Kirschner Litigation moved to withdraw the reference for the adversary proceeding. This Court issued a Report and Recommendation in which it agreed the reference should be withdrawn for trial but recommended that the Court retain the case for all pre-trial purposes. The moving defendants have objected to the Court's Report and Recommendation, and those objections remain pending before the District Court.

[19] **Ex. 31** (App'x. 2720-2810), June 10, 2021 Hearing Transcript, at 81:5-16 (App'x. 2804) and 83:1-12 (App'x. 2802), a true and correct copy of which is included in the Appendix to this Supplement.

- The Court refused to grant The Dugaboy Investment Trust's motion to compel Debtor to file the "periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or debtor . . . in which the estate holds a substantial or controlling interest" as required by Fed. R. Bankr. P. 2015.3(a).[20] The Court raised concerns that the statutorily required information might be used to "cobble together a new adversary alleging mismanagement" against Debtor[21] and did not grant the motion because, among other things, it would be unduly burdensome.[22]

- The Court entered a *sua sponte* order questioning Movants' standing to object to various settlements and actions involved in the handling of the Estate.[23] The Court ordered any party it perceives to be related to Mr. Dondero (in some instances, despite evidence that no such relationship exists) to disclose: (1) its ownership structure, (2) Mr. Dondero's ownership interest, (3) its managers, officers, and directors, and (4) the basis for the entity's assertion of its status as a creditor with standing.[24]

- The Court ruled that Highland Capital Management, L.P. ("HCMLP") was not required to comply with 11 U.S.C. § 363, even when the transaction at issue involved the sale of a subsidiary. Concurrently, the Court denied Mr. Dondero's request for notice of major, outside-the-ordinary course sales of assets by HCMLP.[25]

- The Court failed to require any reporting by HCMLP or its management during the course of the Bankruptcy, effectively obfuscating the public's ability to ascertain the value of the Estate and fatally undermining public accountability.[26]

- The Court enjoined non-parties from communicating with Mr. Dondero. When the non-parties' counsel later objected to this order as improper, the Court enjoined Mr. Dondero from communicating with non-parties in direct violation of his First

[20] *Id*. at 49:12-14 (App'x. 2768).

[21] *Id*. at 46:11-13 (App'x. 2765).

[22] *Id*. at 49:12-51:3 (App'x. 2768-2770).

[23] *See* **Ex. 33** (App'x. 2816-2828), the June 17, 2021 Order, at p. 1 (App'x. 2816), a true and correct copy of which is included in the Appendix to this Supplement ("This Order is issued by the court *sua sponte* pursuant to Section 105 of the Bankruptcy Code and the court's inherent ability to efficiently monitor its docket and evaluate the standing of parties who ask for relief in the above referenced case. More specifically, the Order is directed at clarifying the party-in-interest status or standing of numerous parties who are regularly filing pleadings in the above-referenced 20-month-old Chapter 11 bankruptcy case."); *see also* **Ex. 38** (App'x. 3045-3049), January 14, 2021 Hearing Transcript at 22:24-24:12 (App'x. 3046-3048), a true and correct copy of which is included in the Appendix to this Supplement.

[24] **Ex. 31** (App'x. 2720-2810), June 10, 2021 Hearing Transcript and **Ex. 33** (App'x. 2816-2828), the June 17, 2021 Order at 12-13 (App'x. 2827-2828).

[25] **Ex. 32** (App'x. 2811-2815), Dec. 10, 2020 Hearing Transcript at 36:1-37:21 (App'x. 2813-2814) and 57:1-15 (App'x. 2815), a true and correct copy of which is included in the Appendix to this Supplement.

[26] **Ex. 26** (App'x. 2441-2697), Feb. 3, 2021 Hearing Transcript at 49:5-24 (App'x. 2489); *see also* Bankr. Dkt. No. 2812.

Amendment rights.[27]

- The Court held Mr. Dondero in contempt for actions taken in the Bankruptcy by CLO Holdco, while at the same time acknowledging that Mr. Dondero is not an agent of CLO Holdco.[28] The Court justified its order by generically commenting that Mr. Dondero "sparked the fire."[29] Despite the fact that the invoices submitted by HCMLP's counsel show that it only incurred $38,796.50 in connection with the civil contempt motion, the Court ordered the DAF, CLO Holdco, Sbaiti & Co. (including Mazin Sbaiti and Jonathan Bridges individually), Mark Patrick, and Mr. Dondero to pay ***$239,655*** to HCMLP as a result of their contempt.[30] Worse still, the Court tacked on an additional monetary sanction of $100,000 to be paid by any individual or entity that chose to appeal the Court's sanction order.[31]

- The Court approved a liquidating plan of reorganization even though: (1) the actual evidence demonstrates that HCMLP is and always has been solvent; (2) the only reason for HCMLP's bankruptcy filing was to restructure a single judgment debt; and (3) Mr. Dondero made multiple offers in the Bankruptcy to settle the Estate by paying ***100% to creditors***.

- The Court ordered that Mr. Dondero and his sister Nancy Dondero (but no other party) attend all hearings in the Bankruptcy, regardless of whether their presence is needed or if they are taking a position on the matter at issue in the hearing.[32]

- The Court ordered that a gatekeeping injunction would apply even to cases over which the Court does not have jurisdiction and over which the Court would not preside, based on the Court's conclusion that Mr. Dondero is a "vexatious litigant" (and despite its earlier decision not to make such a finding).[33]

- The Court has continually—and incorrectly—insisted that various entities represented by independent counsel are "controlled by" by Mr. Dondero, going so far as to discourage these entities from separately participating in the litigation and suggesting that they should prove to the Court that they require their own counsel.[34]

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[27] **Ex. 8** (App'x. 0785-0989), Jan. 8, 2021 Hearing Transcript, *e.g.*, at 164:3-195:12 (App'x. 0948-0979).

[28] Bankr. Dkt. 2660 at 20 n.71.

[29] *Id*. at 21.

[30] *See id.* at 28-30.

[31] *Id*. at 30.

[32] **Ex. 39** (App'x. 3050-3054), May 20, 2021 Hearing Transcript at 20:19-21:14 (App'x. 3051-3052), a true and correct copy of which is included in the Appendix to this Supplement.

[33] **Ex. 41** (App'x. 3068-3070), June 25, 2021 Hearing Transcript at 109 (App'x. 3069), a true and correct copy of which is included in the Appendix to this Supplement.

[34] **Ex. 40** (App'x. 3055-3067), May 10, 2021 Hearing Transcript at 44:12-54:10 (App'x. 3056-3067), a true and correct copy of which is a included in the Appendix to this Supplement ("As you all know, there are ***so many law firms, so***

- When Mr. Dondero moved to compel Debtor's deposition testimony, the Court deemed that there was an ulterior motive of "antagonism" behind Mr. Dondero's request.[35] The statement illustrates how the Court views routine litigation steps by Mr. Dondero, like discovery motions, not as a normal part of defending an adversary proceeding, but rather, as a nefarious "antagonistic move."

- In its latest ruling from the bench, in response to allegations in a separate Texas state-court lawsuit by Mr. Ellington (HCMLP's former General Counsel and a co-defendant with Mr. Dondero in the Kirscher Litigation), in which Mr. Ellington alleges that he and his family had been repeatedly stalked by former HCMLP employee Pat Daugherty, the Court took an unsubstantiated position that stalking statutes do not protect men: "Now, I have read the lawsuit and I have read that Mr. Ellington accuses Mr. Daugherty of driving by his father's house, driving by his sister's house, driving by his office, 143 sightings, he's taking pictures. If – I don't even know what to say except this is embarrassing. One grown man accusing another grown man of stalking. Okay? A statute, by the way, that was designed to protect, you know, ex-wives, girlfriends, battered women, from abusive men. You know, gender doesn't matter, but wow. It's just – I don't know what to say except people should be embarrassed, so that's what I'm going to say."[36] The statutes invoked in that lawsuit do not contain any exclusion based on gender and protect men who are being stalked as equally as women.

9. As set forth in the Original Recusal Motion, "a fair trial in a fair tribunal is a basic requirement of due process."[37] The Court's negative opinions of Mr. Dondero reveal a high

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many lawyers involved now that are basically singing the same tune at a lot of these hearings as far as objections, me too, me too, me too …. ***But I do very much have the impression, Mr. Dondero, that all roads lead back to you*** …. And I am leaning towards requiring information to be filed of who owns what, who are the stakeholders. That'll help me understand, is it necessary to have this entity filing a separate objection or motion from this other entity or not? …. Well, ***if you don't figure out a way to rein it in, then I'm just going to have to get that list of who are the stakeholders in these entities***, under oath, because I don't understand it. ***I don't understand why we need these many lawyers filing position papers.***"); Adv. Dkt. No. 151 at 5 ("The causes of action all arise from pre-confirmation conduct allegedly perpetrated by Highland's founder James Dondero and individuals and entities affiliated with him, which purportedly resulted in hundreds of millions of dollars in damages to Highland. ***It appears that all of the Defendants are owned, controlled, or related to Mr. Dondero, although some of the Defendants dispute this characterization***.").

[35] **Ex. 39** (App'x. 3050-3054), May 20, 2021 Hearing Transcript at 34:3-9 (App'x. 3053) ("I mean I want to stress that this comes against a backdrop of — well, it seems like some antagonism, to say the least, on the part of Mr. Dondero where Mr. Seery's concerned. ***It seems like it's always a fight with Mr. Seery.*** And you say, well, we didn't handpick him as the 30(b)(6) witness, but, you know, the motion to compel names him by name. It just — ***it feels like another antagonistic move.***") (emphasis added).

[36] **Ex. 42** (App'x. 3071-3073), Mar. 1, 2022 Hearing Transcript at 83:12-23 (App'x. 3072), a true and correct copy of which is included in the Appendix to this Supplement.

[37] *Caperton v. A.T. Massey Coal Co*., 556 U.S. 868, 877 (2009) (internal quotation marks and citation omitted); *see also Johnson v. Mississippi*, 403 U.S. 212, 216 (1971) (per curiam) ("Trial before 'an unbiased judge' is essential to due process.") (quoting *Bloom v. Illinois*, 391 U.S. 194, 205 (1968)); *Miller v. Sam Houston State Univ.*, 986 F.3d 880, 893 (5th Cir. 2021) (citing *United States v. Jordan*, 49 F.3d 152, 155 (5th Cir. 1995)).

degree of antagonism, which makes it nearly impossible for Mr. Dondero and the Affected Parties to fully defend themselves and assert their rights in this forum, including against claims filed against Mr. Dondero and several of the Movants in the Kirschner Litigation. At a minimum, that is the perception that has been created.[38]

10. The Movants thus file this *Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455* and *Brief in Support*. In doing so, Movants respectfully request the Court, after considering the Original Recusal Motion and this Supplement thereto, enter a final, appealable order on this issue.

Dated: August 26, 2022

Respectfully submitted,

CRAWFORD, WISHNEW & LANG PLLC

/s/ Michael J. Lang
Michael J. Lang
Texas State Bar No. 24036944
mlang@cwl.law
1700 Pacific Ave, Suite 2390
Dallas, Texas 75201
Telephone: (214) 817-4500

Counsel for Movants

CERTIFICATE OF SERVICE

The undersigned certifies that, on August 26, 2022, a true and correct copy of the above and foregoing document was served on all parties and counsel set to receive notice by the Court's ECF system.

/s/ Michael J. Lang
Michael J. Lang

[38] *Liteky*, 510 U.S. at 551; *In re Kansas Pub. Employees Retirement Sys.*, 85 F.3d 1353, 1358 (8th Cir. 1996).

CRAWFORD, WISHNEW & LANG PLLC
Michael J. Lang
Texas State Bar No. 24036944
mlang@cwl.law
1700 Pacific Ave, Suite 2390
Dallas, Texas 75201
Telephone: (214) 817-4500

Counsel for Movants

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	)	Case No. 19-34054-sgj-11
	)	
Highland Capital Management, L.P.,	)	Chapter 11
	)	
Debtor.	)	
	)	

AMENDED APPENDIX TO MOTION FOR FINAL APPEALABLE ORDER AND SUPPLEMENT TO MOTION TO RECUSE PURSUANT TO 28 U.S.C. § 455 AND BRIEF IN SUPPORT [DKT. 3406]

James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., The Dugaboy Investment Trust, The Get Good Trust, and NexPoint Real Estate Partners, LLC, f/k/a HCRE Partners, LLC, a Delaware limited liability company (collectively, "Movants") file this Amended Appendix in support of their *Motion for Final Appealable Order and Supplement to Motion to Recuse Pursuant to 28 U.S.C. § 455* and *Brief in Support*:

Exhibit No.	Description	Appendix Nos.
31	June 10, 2021 Hearing Transcript	APP'X. 2720-2810
32	December 10, 2020 Hearing Transcript	APP'X. 2811-2815
33	June 17, 2021 Order	APP'X. 2816-2828
34	February 9, 2022 Memorandum Opinion and Order by Judge Kinkeade	APP'X. 2829-2842

35	Withdrawn	APP'X. 2843-2924
36	Withdrawn	APP'X. 2925-3013
37	Withdrawn	APP'X. 3014-3044
38	January 14, 2021 Hearing Transcript	APP'X. 3045-3049
39	May 20, 2021 Hearing Transcript	APP'X. 3050-3054
40	May 10, 2021 Hearing Transcript	APP'X. 3055-3067
41	June 25, 2021 Hearing Transcript	APP'X. 3068-3070
42	March 1, 2022 Hearing Transcript	APP'X. 3071-3073

Dated: August 26, 2022

Respectfully submitted,

CRAWFORD, WISHNEW & LANG PLLC

By: */s/ Michael J. Lang*
Michael J. Lang
Texas State Bar No. 24036944
mlang@cwl.law
1700 Pacific Ave, Suite 2390
Dallas, Texas 75201
Telephone: (214) 817-4500

Counsel for Movants

CERTIFICATE OF SERVICE

The undersigned certifies that, on August 26, 2022, a true and correct copy of the above and foregoing document was served on all parties and counsel set to receive notice by the Court's ECF system.

/s/ Michael J. Lang
Michael J. Lang

EXHIBIT 31

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	**Case No. 19-34054-sgj-11** Chapter 11 Dallas, Texas Thursday, June 10, 2021 9:30 a.m. Docket MOTION TO COMPEL COMPLIANCE WITH BANKRUPTCY RULE 2015.3 FILED BY GET GOOD TRUST AND THE DUGABOY INVESTMENT TRUST (2256)
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, v. HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., Defendant.	**Adversary Proceeding 21-3006-sgj** DEFENDANT'S MOTION FOR LEAVE TO FILE AMENDED ANSWER AND BRIEF IN SUPPORT [15]
HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, TO v. HCRE PARTNERS, LLC N/K/A NEXPOINT REAL ESTATE PARTNERS, LLC, Defendant.	**Adversary Proceeding 21-3007-sgj** DEFENDANT'S MOTION FOR LEAVE TO AMEND ANSWER TO PLAINTIFF'S COMPLAINT [16]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

For the Get Good Trust and Dugaboy Investment Trust:	Douglas S. Draper HELLER, DRAPER & HORN, LLC 650 Poydras Street, Suite 2500 New Orleans, LA 70130 (504) 299-3300
For the Debtor:	Jeffrey Nathan Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
For the Debtor:	John A. Morris PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Street Chicago, IL 60603 (312) 853-7539
For James Dondero:	Clay M. Taylor BONDS ELLIS EPPICH SCHAFER JONES, LLP 420 Throckmorton Street, Suite 1000 Fort Worth, TX 76102 (817) 405-6900
For the NexPoint Parties:	Lauren K. Drawhorn WICK PHILLIPS 3131 McKinney Avenue, Suite 100 Dallas, TX 75204 (214) 692-6200
Recorded by:	Michael F. Edmond, Sr. UNITED STATES BANKRUPTCY COURT 1100 Commerce Street, 12th Floor Dallas, TX 75242 (214) 753-2062

Transcribed by: Kathy Rehling
311 Paradise Cove
Shady Shores, TX 76208
(972) 786-3063

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

DALLAS, TEXAS - JUNE 10, 2021 - 9:44 A.M.

THE COURT: All right. Let me change my stacks here. I will now hear what was Matter No. 1 on the docket, Highland Capital, Case No. 19-34054. We have a motion from the Dugaboy and Get Good Trusts seeking compliance with Bankruptcy Rule 2015.3.

Who do we have appearing for the trusts this morning?

MR. DRAPER: Douglas Draper, Your Honor.

THE COURT: All right. And for the Debtor this morning?

MR. POMERANTZ: Good morning, Your Honor. Jeffrey Pomerantz; Pachulski Stang Ziehl & Jones; on behalf of the Debtor.

THE COURT: All right. Do we have any other parties wishing to make an appearances? These are the only parties who filed pleadings, but I'll go ahead and ask if anyone wants to appear for any reason.

MR. CLEMENTE: Good morning, Your Honor. It's Matt Clemente at Sidley on behalf of the Committee. I'm here.

THE COURT: All right. Thank you, Mr. Clemente.

All right. Mr. Draper, how did you want to proceed?

MR. DRAPER: I'd just -- I think the issue is primarily a legal issue, Your Honor.

THE COURT: Uh-huh.

MR. DRAPER: So we've filed with the Court our

response to the Debtor's opposition, I have some comments I'd I like to make, and just leave it at that. I think -- as I said, I believe the issue is purely a legal issue --

THE COURT: Uh-huh. Okay.

MR. DRAPER: -- and can go from that.

THE COURT: All right.

MR. DRAPER: All right. We are here -- thank you, Your Honor. Can I start?

THE COURT: Yes, you may.

MR. DRAPER: Thank you. We're here before the Court today on what should be a rather routine matter. All I'm asking the Court to do is to require the Debtor to do what it should have done when the case was filed and is required pursuant to Bankruptcy Rule 2015.3.

2015.3 uses the term "shall" and requires the Debtor to file an official form -- and this is important, because I'm going to come back to the official form -- with respect to the value, operations, and profitability of each entity in which the Debtor has a substantial or controlling interest.

The reports, the Rule says, shall be filed seven days before the first meeting of creditors and every six months thereafter.

Under 2015.3(d), I recognize a court may, after notice and a hearing, modify the reporting requirement. No request has been made by counsel for the Debtor, who I will stipulate

knows the Rules, are experienced, and understand that the rule existed the day they came into the case. And quite frankly, what we have now is, from what I can see, an intentional decision not to file the report.

As the Court knows, this matter was brought before this Court in February, when the confirmation hearing was held. And if the Court will recall, Mr. Seery's comment was (a) it slipped through the cracks; and (b) he implied that it would be done. That was February. I had hoped, and I think everybody had hoped, that Mr. Seery, Highland, and Debtor's counsel would be so embarrassed by the fact that they didn't file [sic] the rule that they would have either (a) filed [sic] the rule; or (b) sought -- sought a waiver of the rule. They did neither.

Now, let's -- let's go through the 2015.3(d). There are two items that are not exclusive, and so I recognize it. The first is that they can't do it, and second is with respect to the information is publicly available. If you look at the cases that the Debtor has cited in support of their position that courts have waived compliance with the rule, you'll note that three of the four cases deal with first day motions when in fact they ask for extensions of time to file their schedule, Statement of Financial Affairs, and other things. These are normal first day motions. I understand the extension in that case. And quite frankly, those extensions

are -- fall into the "I can't do it."

The only excuse the Debtor has offered, other than their response to date, was, oh, I forgot, or it slipped through the cracks. That is not a legitimate excuse. It never has been and never will be, and should not be countenanced by the Court.

And so let's start with the after-the-fact excuses offered by the Debtor. The first is the bad guy defense -- *i.e.*, Dugaboy is a Dondero entity; they're asking for this information for nefarious purposes. That has to -- that should be completely disregarded by the Court. This is a systematic issue that neither you nor I nor the Debtor's counsel put in the Code or put in the Rules. It is a requirement, it's systematic, and we, as counsel and people acting on behalf of the estate and sort of people who oversee the system, should insist that this be filed. The bad guy defense is not an excuse. And quite frankly, this is information that is required.

So what I'm asking for today is not gamesmanship. I don't think it is ever gamesmanship when you ask for the compliance with a rule that says shall. Again, it's systematic, and we are here -- and I don't know why -- either the U.S. Trustee was asleep at the switch or anybody else was asleep at the switch -- that this matter hadn't been brought to the Court's attention.

So the word "shall" is not strained in any fashion. It's not limited in any fashion. The word "shall" is absolute.

So, again, had -- was there some secret deal between the Trustee -- U.S. Trustee and the Debtor? I don't know. That may have been. But quite frankly, --

THE COURT: A secret deal?

MR. DRAPER: -- the Code, in 2015 --

THE COURT: Did you just use the term "a secret deal"?

MR. DRAPER: Well, some --

THE COURT: What --

MR. DRAPER: I'm not using the term. What I --

THE COURT: That's highly charged, that --

= MR. DRAPER: No, --

THE COURT: -- choice of words.

MR. DRAPER: What I mean, what I really mean is sometimes we go to the U.S. Trustee and say, look, can we have an extension? Can we have -- can we do this a little bit later? And the U.S. Trustee, in fairness to them, basically says, okay, you can do this or that. I don't know if that occurred in this case. But quite frankly, what we have are 20 months of noncompliance. And so I don't know if they said, look, --

THE COURT: Okay.

MR. DRAPER: -- you don't have to file it now.

THE COURT: So you meant an informal deal, not secret deal?

MR. DRAPER: Yes.

THE COURT: A secret deal, that sounds like something nefarious. Okay? So, --

MR. DRAPER: No, it is not intended in that -- it's --

THE COURT: Okay.

MR. DRAPER: Judge, it's not intended in that fashion.

THE COURT: Okay.

MR. DRAPER: This goes to my issue that it's systematic. It's a systematic compliance.

And let's also go the fact that the Bankruptcy Code requires complete and open disclosure. It does not matter who or why compliance is requested.

The next objection is I waited too long. And they offer an excuse, Judge, we're going to go effective. Let's look at what the Code requires -- the rule requires. It says it shall be filed, it has to be filed at certain points, through the effective date of a plan. It doesn't say after the effective date of a plan is filed or after the effective date of a -- of a plan occurs, your compliance is not required.

And I'll point out something where you ruled against me, and we've contrasted that in our motion -- in our opposition.

If you look at the examiner statute, which I know the Court has looked at and completely disagreed with my reading of it, it basically says after confirmation you don't have to do it. This statute doesn't say that. This statute says you have to file these through the effective date of a plan.

And so, you know, that "You waited too long" is really not a legitimate excuse.

The next issue is -- and --

THE COURT: Well, on that point, --

MR. DRAPER: And let's look at the cases.

THE COURT: On that point, can I just ask, what is the utility? I mean, let's say we're one -- okay. Let's say we're one month away from the effective date. Let's say we're three months away from the effective date. What is the utility at this point? There's a confirmed plan. Now, granted, it's on appeal. But, you know, what -- what would you --

MR. DRAPER: Well, --

THE COURT: What would you do with this information at this point? We have a confirmed plan.

MR. DRAPER: Well, there are two responses to that. First of all, the rule says you have to file it through the effective date of a plan. Somebody in rulemaking authority made that determination. And so it's not for you or I to question. That's the rule.

The second is the utility may be for further actions in the case that occur after the effective date. We just don't know.

And so the rule is designed to require things to be filed --

THE COURT: Wait. What did that last statement mean, --

MR. DRAPER: -- through the effective date.

THE COURT: -- for actions that might occur after the effective date?

MR. DRAPER: It may be --

THE COURT: What does that mean?

MR. DRAPER: After the effective date of a plan. There may be some -- some matter that comes up before the Court. And I'll give you the best example --

THE COURT: Well, --

MR. DRAPER: -- of all of them.

THE COURT: Okay.

MR. DRAPER: If you look -- if you look at the form, all right, and what I'd ask the Court to look at is -- I think it's Exhibit E that's required on the form. And what Exhibit E requires is disclosure of information where one of the subsidiaries has either paid or has decided -- has incurred a liability to somebody who would have an administrative expense against the Debtor.

The utility of that post-effective date is important, because post-effective date you'll be dealing with fee applications and other things. So the rule envisions disclosure --

THE COURT: Okay, I -- say that again for me slowly. How --

MR. DRAPER: Okay.

THE COURT: How could there be an administrative expense --

MR. DRAPER: If you'll --

THE COURT: -- claim against the estate in your scenario, again?

MR. DRAPER: Well, my scenario, if you look at Exhibit E that's required in the form, --

THE COURT: Do I have that, Nate?

MR. DRAPER: -- it basically requires a disclosure.

THE COURT: Okay. I don't know if I have it in my stack of paper. I --

MR. DRAPER: Well, let me read it to -- I can read it to you, Your Honor. It's easy. Let me pull it up.

Exhibit E, "Describe any payment by the controlled nondebtor entity of any claim, administrative expense, or professional fee that have been paid or could be asserted against the Debtor or the incurrence of any obligation to make such payments, together with the reason for the entity's

payment thereof or the incurrence of any obligation with respect thereof."

That is clearly a post-effective date issue that the Court should be concerned about, all parties should be concerned about, and so if that occurred, then everybody needs to know about it.

So E envisions something that is absolutely after the effective date that will be -- has a utility after the effective date.

Let's look at B. Again, something that may have something to do with after the effective date. That deals with tax-sharing agreements and tax-sharing attributes.

So -- and then C, which also has something to do with after the effective date and how things sort out through the liquidation, is described claims between controlled debtor, controlled nondebtor entity and any other controlled nondebtor entity.

So there needs to be a disclosure of due-to's and due-from's between the entities. This is -- this is not secret stuff. This is stuff that transcends the effective date of a plan.

And so when I focused on the rule, what I think the Court really needs to look at for the utility of this is exactly what the -- is required by a 2015.3 disclosure.

Does that answer the Court's question?

THE COURT: Yes.

MR. DRAPER: Now, my favorite excuse that's been offered is really what I'll call the secret sauce dispute -- excuse, or the former lawyers for the Debtor. Again, let's break this down and let's look at the form.

What the form requires is there's nothing the Debtor's former lawyers did or who were working for Mr. Dondero. If you look at Exhibit A that's required, is contains the most readily-available balance sheet. That's not a legal issue. Statement of income or loss. That's -- that's just an accounting concept. Statement of cash flows. That's also an accounting concept. And statement of changes in shareholders or partners equity for the period covered by the entire report.

B again has nothing to do with the lawyers, is describe the controlled nondebtor business entity's business operations.

So the information that's here is purely accounting information and it is not secret.

Let's, again, let's focus on A, which -- which I think just deals with financial information. The first one is balance sheet. All right. They've argued that this tells what the value -- what we think the value of an asset is. That's not true. A balance sheet may have a fair market value. A balance sheet may have a book value. I don't know

what they have here. But quite frankly, if you or I sell my house, our house, we go to our agent and we say, hey, look, agent, you know, this is my listing price. That's my opinion as to value. It may not be somebody else's opinion as to value. And quite frankly, when somebody asks or wants to buy an asset, what they come to, don't they ask, hey, what do you want for it?

You know, book value does not equal value. And I know the Court has held -- has had before it many clients or many debtors, and I've represented a lot of debtors, who think a Bic pen that they have is not worth ten cents but is worth a gazillion dollars.

So that issue doesn't go to any secret information. The statement of income doesn't go to secret information. Statement of cash flows does not. And changes in shareholders does not. There's no secret information. The only person who this may be kept away from, possibly, and that -- that, I don't think applies, is a competitor who may want to look at these. And a court can fashion that relief and say, okay, let's put this under seal. If somebody signs a confidentiality agreement, they can have access to this.

But this is purely accounting information. It's nothing more.

And the reference to trade secrets that the Debtor attempts to make is just not true. This is not a trade

secret. There's no confidential research or development or commercial information that's being disclosed. And 9018 that they cite is truly an evidentiary rule. We're not -- this -- this requirement does not go to customers. It does not go to pricing. It does not go to business processes. It just goes to financial information.

So the global argument that they're making is undercut significantly by the -- by what is required under the rule. I'm just asking for mere compliance with the rule, nothing more.

And so, you know, what -- I still don't understand what the issue is, why it hadn't been done. And quite frankly, again, this is systematic. It has nothing to do with who is requesting it, what is requesting it. It should have been done. It should have been done probably by the U.S. Trustee. You know, somebody -- you know, and quite frankly, I've been in this case since December. It was raised in February. You know, I don't understand why, from February to the time I filed this motion, they didn't come in and either (a) file the reports, which on their face appear to be benign; or (b) ask for some reason other than, oops, I forgot.

And so I'd ask the Court to require compliance. I don't think the information here falls into any category of for cause. They can do it. This -- and the cases -- any case they cite does not support their proposition that it shouldn't

be done.

Does the Court have any questions for me?

THE COURT: Well, I do. My brain just constantly goes to standing. And remind me again, the trusts you represent have each filed proofs of claim, correct?

MR. DRAPER: Yes. And they're objected to, --

THE COURT: They are objected to.

MR. DRAPER: -- just so the Court's aware.

THE COURT: Okay. Remind me again what the substance of the claim is about.

MR. DRAPER: The substance of the claim is I have a -- I have a $17 million debt owed to me by Highland Select. And it is our position that this Debtor is also liable for the Highland Select debts through its general partner status, through its comingling of things, and how these assets fit together, between Highland Select, which is a hundred percent owned by the -- ultimately owned by this Debtor. So I'd -- again, the standing issue --

THE COURT: And the debt is --

MR. DRAPER: And I am also an equity holder.

THE COURT: And the debt is pursuant to a note?

MR. DRAPER: It's pursuant to a loan agreement between my client and Highland Select.

THE COURT: All right. And was an administrative expense filed by your client?

MR. DRAPER: Not by my client. No. And I'm also an equity holder in the Debtor that, when the plan goes effective, I ultimately have, at best, a residual interest when the Star Trek Enterprise returns.

THE COURT: Okay. And what is that residual interest? Remind me again. Isn't it less than one percent --

MR. DRAPER: After the --

THE COURT: -- of a subordinated --

MR. DRAPER: After all the class --

THE COURT: Go ahead.

MR. DRAPER: Right. Well, after all the classes are paid in full plus a hundred cents on the dollar -- get a hundred cents on the dollar plus some interest factor, and the -- there's another party who has an equity interest that's ahead of me get paid, I get some -- some money.

Again, I have a residual interest. It's very tangential. And I'll be very frank to the Court and honest, I think ultimately I will receive nothing under that residual interest.

However, my -- the standing is not really an issue here. Honestly, this is a systematic issue. I've tried to make that clear for the Court. It's something that should be employed, and who is asking for it is irrelevant. The Code requires -- the Rules require it. There is no excuse that they've given that should absolve them of that. And whatever excuse they've

given basically falls in -- falls in the face of what the rule -- the official form requires.

I'm not asking for a variance of the official form. I'm asking that this Court not allow a "Oops, I forgot" or "It slipped through the cracks" excuse.

THE COURT: All right. And who is the current trustee of these trusts now?

MR. DRAPER: My trusts? Nancy Dondero is the trustee of the Dugaboy Trust, and I think Grant Scott is the trustee of the Get Good Trust.

THE COURT: Okay. I'm asking because we heard earlier this week that Grant Scott has resigned from certain roles.

All right. Mr. Pomerantz, do you have evidence, --

MR. POMERANTZ: Yes, Your Honor.

THE COURT: -- or argument only?

MR. POMERANTZ: Argument only, Your Honor.

THE COURT: Okay.

MR. POMERANTZ: As with -- as with many of the other motions that have been filed with this -- in this case and has burdened the Court's docket over the last several months, I really can't help to wonder why we are here.

Eighteen months after the case was filed, after plan confirmation, and with the effective date that's set to occur soon, Dugaboy and Get Good, the family trusts, ask the Court

to compel the Debtor's compliance with 2015.3. It reminds me of the motion that Mr. Draper mentioned that he filed on the eve of confirmation, the eve of confirmation, fourteen months after the case had been filed, seeking an examiner. And the Court denied that motion without a hearing.

Now they're back again with, as Your Honor mentioned and I'll get to in a little bit, with the same tangential connection to the bankruptcy case and the same tenuous standing that the Court has alluded to on several occasions, including just a couple minutes ago.

It's clear that the motion, which is not supported by any other creditor in the case and is actually opposed by the Official Unsecured Creditors' Committee, is not about financial transparency, as Mr. Draper would like Your Honor to believe, but it's filed as a further litigation tactic to gain access to information that Mr. Dondero would not be able to obtain through discovery, who has tried to obtain through other means, and that the Debtor believes will be used for improper purposes.

One of the Movants, Dugaboy, is actually the holder of two claims against the Debtor. I guess Mr. Draper forgot about his administrative claim, which really goes to the validity of it. One is the claim against the Select Fund, a subsidiary of the Debtor, for which Mr. Draper says they should be liable, including under an alter ego theory.

Yes, Your Honor heard me right. Dugaboy is saying that the Debtor is an alter ego with a nondebtor entity. One would think that, given the recent disclosures and commencement of litigation -- and I'm talking about the UBS litigation -- that Mr. Dondero would be the last one to raise alter ego. In any event, that claim is disputed.

The second claim is an administrative claim that Mr. Draper filed on account of their 1.71 percent interest in Multistrat, saying they were damaged by decisions Mr. Seery made by selling certain life insurance policies in the spring of 2020.

There is a theme here, Your Honor: Claims that Mr. Seery made decisions that harmed -- in this case -- Dugaboy's 1.71 percent interest.

The claim has no merit. The Debtor will contest it. But even if it was allowed, the claim would be paid a hundred cents on the dollar under the plan. And accordingly, the information under 2015.3 is not relevant.

Get Good filed a claim which alleges they may have a claim from its limited partnership interest in the Debtor. But for the record, Get Good is not a limited partner of the Debtor.

So, how did we get here, Your Honor? The Dondero entities sandbagged the Debtor by raising the issue for the first time during the confirmation trial. Not in their briefs, not in communications to the Debtor in advance of the confirmation,

but while the Debtor had its witness on the stand.

And why did they do it that way? Because they wanted to be able to argue, and they did argue to Your Honor, that the Court couldn't confirm the plan because the Debtor did not comply with Rule 2015.3, was in violation of 1129(a)(2), and the Court could not confirm the plan.

Of course, the Court rejected that argument. And when the Debtor entity -- when the Dondero entities raised it as a reason for Your Honor to enter a stay pending appeal, Your Honor commented that that claim bordered on frivolous. And of course, that issue has been raised to the Fifth Circuit as one of the reasons to overturn Your Honor's confirmation order.

And why are the Dondero entities persisting now in their effort to obtain disclosure? It's because they're desperate to obtain financial information about the Debtor because they want to become involved in the Debtor's future asset dispositions at the nondebtor affiliates and they want to get information.

As Your Honor will recall, Mr. Dondero filed a motion in January asking for this Court to require the Debtor to bring affiliated -- affiliated entity asset sales to the Court. The Debtor opposed the motion, and before the hearing it was withdrawn.

Your Honor has heard testimony from Mr. Seery throughout the case that Mr. Dondero previously interfered with the

Debtor's asset sales and that -- and on that basis, the Debtor was not comfortable including Mr. Dondero in sale processes. And I'm not talking about the AVYA and the SKY stock from the CLO funds, but rather certain transactions regarding SSP and OmniMax which were subject to a motion made by, I believe, the Funds or the Advisors -- I get them confused sometimes -- accusing the Debtor of mismanaging the CLOs. And if Your Honor recalls, Your Honor denied that motion based upon a directed verdict.

So, having been rebuffed by the Debtor in its attempts to obtain financial information that they're not entitled to, the trusts have one last effort. Press 2015.3 arguments, because, of course, they're very interested in the integrity of the process, in the institution, in the following of the Bankruptcy Code. That is exactly what their motivation is.

But there's yet another reason, Your Honor, the Debtor believes Mr. Dondero, through the trusts, is pursuing this motion. As Your Honor is aware, the Debtor recently discovered some extremely troubling information regarding a massive fraud involving a previous --

(Audio cuts out.)

THE COURT: Uh-oh.

THE CLERK: He froze up.

(Pause.)

THE COURT: All right. Mr. Pomerantz, you're frozen.

Is everybody frozen, or is it just him?

MR. POMERANTZ: There'll be some judicial estoppel.

THE COURT: Okay. Mr. Pomerantz?

MR. POMERANTZ: Yes.

THE COURT: You were frozen for about one minute. So I am sorry, --

MR. POMERANTZ: Uh-huh.

THE COURT: -- you're going to need to repeat the past minute for me.

MR. POMERANTZ: Just to check if you were listening, Your Honor, what was the last thing you remember me saying?

THE COURT: I was listening.

MR. POMERANTZ: Okay. So I will -- did you hear me talk about Mr. Seery's testimony throughout the case?

THE COURT: No. No.

MR. POMERANTZ: Okay. I'll go back a paragraph before. Okay. Okay.

And why are the Debtor -- why are the Dondero entities persisting now in their effort to obtain disclosure? It's because the Dondero entities are desperate to try to obtain financial information, information they would not otherwise be entitled to under discovery rules, because they want to become involved, he wants to become involved in the Debtor's asset dispositions in the future regarding affiliated nondebtor entities.

If Your Honor will recall, Mr. Dondero made a motion in January seeking an order from this Court requiring the Debtor to bring to this Court asset sales from nondebtor affiliates. The Debtor opposed the motion, and before the hearing on the motion it was withdrawn.

Your Honor has heard testimony from Mr. Seery throughout the case that Mr. Dondero previously interfered or tried to interfere with the Debtor's asset sales, and on that basis the Debtor was not comfortable inviting Mr. Dondero into its asset sale processes.

And I'm not talking about the AVYA and SKY stock from the CLOs, but rather certain transactions regarding SSP and OmniMax, which were closed for fair value, which were subject of a motion that the Advisors or the Funds -- and I often get them confused -- that they made, accusing the Debtor of mismanaging the CLOs. And I'm sure Your Honor recalls. Your Honor denied that motion on a directed verdict basis.

So, having been rebuffed in their attempts to try to get the information that they weren't entitled to, they're now proceeding under 2015.3. And, of course, Mr. Draper say he is a protector of the process, the integrity of the system demands it. It has nothing to do with Mr. Dondero's interests, of course, because Mr. Draper is just there to make sure everything runs on time and everything is done according to the law, notwithstanding the fact that the U.S. Trustee

hasn't brought this motion, notwithstanding the fact that the Unsecured Creditors' [Committee] supports our position, and notwithstanding the fact that not one creditor, not one unaffiliated creditor, has asked this Court for that information and relief.

There's yet another reason, Your Honor, the Debtor believes that the trusts are pursuing this motion. As Your Honor is aware, the Debtor recently discovered some extremely troubling information regarding a massive fraud involving a previously-unknown entity called Sentinel Reinsurance. And that information is the subject of an adversary proceeding filed by UBS, which Your Honor heard substantial information about both in connection with hearings on that motion practice and also at the UBS 9019 motion.

The Debtor believes that the 2015.3 motion is a veiled or pretty transparent effort of Dondero trying to find out what the Debtor knows and what the Debtor doesn't know and trying to get the Debtor to go on record with information that later in litigation they will use as a judicial estoppel.

Your Honor, that's not an appropriate predicate for the motion. Mr. Draper will deny that that's the reason, of course, but I leave it for Your Honor to look at the circumstances and make your own conclusions.

As the Court has mentioned many times, context matters, and the Court should take this context into account in looking

at the motion and the requested relief.

In our opposition, we argue that the Court should either waive the 2015.3 compliance, given the anticipated effective date, or continue the hearing to September 1 for a further status conference if the effective date doesn't occur.

The burden on the estate if it was required to comply with 2015.3 is significant, and this goes to the issue Your Honor mentioned, that, really, what's the point at this stage of the case? There are more than 150 entities that arguably meet the definition of substantial or controlling interest for which the Debtor would be required to file reports under 2015.3. As the Court knows, the Debtor is down to 12 staff, 13 if you include Mr. Seery. And if those employees working with the Debtor's financial advisors were required to devote the necessary time and effort to prepare the reports, the time and the cost it would take would be substantial. The Debtor just doesn't have the bandwidth to comply.

More importantly, Your Honor, as we mention in our opposition, Mr. Seery and the board are extremely concerned with the quality of information it has received from the Debtor's employees who have since been terminated by the Debtor and now most of them are working for Mr. Dondero and his related entities in one form or another. It's not just the lawyers, as Mr. Draper says. It's the financial advisors, who, in other contexts, and you'll hear a little later, are

coming up with new information, new defenses on notes, et cetera. The Debtor has no confidence that the information in its records is accurate from a financial perspective or from a legal perspective.

As I mentioned, the Court is aware of the Sentinel cover-up. And uncovering just the facts regarding Sentinel was a very difficult process and required the Debtor to essentially conduct discovery against itself. It just couldn't rely on its information. So conducting the diligence that would be required to provide accurate information for 150 entities, intercompany claims, administrative claims, back and forth, due-to's, due-from's, tax issues, all the stuff required by the forms would be an extremely arduous task. It would take millions of dollars of forensic accounting. And it wouldn't -- and for what purpose? There is no purpose.

In addition, Your Honor, to waiving filing the reports, 2015.3 also allows the Court to modify the reports requirement for cause when the debtor is not able, in making a good faith effort, to comply with the requirements. Your Honor, in this case, cause is clearly established under 2015.3.

Dugaboy spends a lot of time in their reply attacking the cases that the Debtor cites in its opposition. While the facts in those cases are different from the case here, they all share something in common which is the key point: All of the cases involve a waiver of the 2015.3 requirement for plans

that will be confirmed or will soon become effective.

Mr. Draper doesn't contest that this Court has the power to waive. He says, well, those requests were made in the first 30 days of the case or in the initial part of the case. But they all granted relief where the effective date -- where either the confirmation date occurred and they were waiting for the effective date, or the confirmation case was -- was pending.

And Your Honor, we would ask the Court to treat the Debtor's opposition as a motion to waive the requirement under 2015.3. We could file a separate motion after this hearing. It would be a waste of time. But we would ask Your Honor, treat our opposition as a motion.

Dugaboy spends the rest of its time, in the papers and its argument that Mr. Draper made, challenging several arguments, other arguments the Debtor makes in its opposition. First, they argue that there is no deadline for seeking compliance and that the insinuation that we made that this is gamesmanship is off base. I'll acknowledge, Your Honor, 2015.3 does not contain a deadline for a party seeking compliance. But as I said before, context matters. And given how this motion has come to be before your court, I will leave it for Your Honor to determine which party is the true one playing games here.

Second, Dugaboy argues that there's nothing confidential

in any of the information required to be filed in the 2015.3 reports and that the disclosure of information will facilitate interest in the assets and maximization of the Debtor's assets. Twenty months into this case, Your Honor, no party other than Mr. Dondero or his related entities has complained to the Court that the Debtor is not being transparent or forthcoming.

And there's good reason for that. Even during the early stages of this case, when the Debtor and the Committee had their differences, the Debtor was entirely forthcoming with information about its assets, nondebtor affiliates, and strategy for maximizing assets of the Debtor and its affiliated entities. That collaborative effort continues today, and I suspect is one of the reasons that the Committee has joined in the Debtor's opposition here.

Similarly, the Debtor's nondebtor affiliates have transacted business with third parties postpetition. The Debtor has provided information to those parties as appropriate, subject to nondisclosure agreement, and several successful processes have been run that have maximized value.

And just to make clear, Your Honor, we do not believe that Mr. Dondero or his related entities signed a nondisclosure agreement that they would comply with the obligations. So we have no interest and no desire, unless ordered by the Court, either in this context or another context, to provide Mr.

Dondero or his related entities with information that the Debtor believes would prejudice its ability to monetize assets.

The alleged transparency that Mr. Draper and the trusts seek is not borne out of a desire to open the playing field and make it level and put financial information in the public domain for the good of the case. It's about getting access to information that the Debtor, in the exercise of its business judgment -- should not be disclosed.

Lastly, Mr. Draper again, during oral argument, harped on Mr. Seery's testimony that the reason the reports were not filed is that they fell through the cracks. It's misleading. He also stated that Mr. Seery said they would file the reports. I've looked at the testimony. That's not what he said. But he did say at confirmation that it slipped through the cracks. No doubt. That's in the transcript.

And yes, the Debtor stands behind the fact that, in the months leading to the confirmation hearing, neither Mr. Seery nor the Debtor's professionals even thought about 2015.3.

But Your Honor, it's what has happened since that justifies the Debtor's request for a waiver. The plan is soon to become effective. As I said, the Debtor is down to 12 employees, who could not possibly prepare this information without substantial time and effort. Their effort and their time should be focused on monetizing assets that will put

money in creditors' pockets, hopefully sooner than later.

And on top of that, given the massive fraud that management has uncovered, and continues to uncover information to this day, Your Honor, on matters separate from the Sentinel matter -- every week, we are finding out new information that has not been made public that causes us real concern, and at the appropriate time that information will be brought before the Court -- the Debtors simply can't rely on that information. And to be required to go through the effort to put that information out in the public record so Mr. Dondero can later say that the Debtor was judicially estopped, or use that information for an ulterior purpose or a litigation strategy, just does not make sense.

Based upon the foregoing, Your Honor, we would ask that the Court deny the motion and grant the Debtor a waiver of the 2015.3 requirements.

Does Your Honor have any questions?

THE COURT: I do not think so. Well, I just -- am I correct in remembering the Debtor had somewhere around 75 employees at the beginning of this case? And I didn't know it was down to 12. I knew it was down very low. But that's what we're talking about?

MR. POMERANTZ: Yeah, that -- that sounds about right, Your Honor.

THE COURT: Okay.

MR. POMERANTZ: And I should mention, you know, I was there at the beginning. I was there before the board. The first couple months of the case, it was extremely difficult to get the Debtor's employees focused on trying to get the information for the 2015.3. They did not want that information disclosed. And it's sort of a -- sort of a little ironic that now they're here asking for disclosure.

But, look, we're not going to walk away from the fact that, yeah, it slipped through the cracks. After the board took over, Your Honor has heard many times what they did, the efforts they went to. If the U.S. Trustee had approached us, if Mr. Dondero had approached us early on, we would have figured out a way to address that and deal with that. The fact of the matter, it wasn't. The fact of the matter, it was brought up as a litigation tactic on confirmation, to defeat confirmation of the plan. And as I mentioned, for the reasons, it's being used as a tactic now as well.

THE COURT: All right. Thank you.

MR. DRAPER: Your Honor, I -- can I -- can I make a few comments?

THE COURT: No, not --

MR. DRAPER: I'll be short.

THE COURT: Not yet. Mr. Clemente, --

MR. DRAPER: Okay.

THE COURT: -- I neglected to mention when I was

taking appearances, you filed a joinder on behalf of the Committee with regard to --

MR. CLEMENTE: That's correct, Your Honor.

THE COURT: So I need to hear from you next, and then I'll circle back to Mr. Draper.

MR. CLEMENTE: That's correct, Your Honor. And just for the record, Matt Clemente from Sidley Austin.

THE COURT: I should say, a joinder in the opposition. That was a confusing statement I just made.

MR. CLEMENTE: Yeah, that's correct, Your Honor.

THE COURT: Uh-huh.

MR. CLEMENTE: And so I will be very brief, because Mr. Pomerantz was obviously very thorough. But just to echo what he said, you know, the Committee is comfortable with the information that it has received. And as Your Honor knows, we haven't been and won't be shy about coming to the Court if we felt that that was not the case.

You know, we obviously had our issues early on in the case, including with respect to getting information from the Debtor. But, again, the Committee, you know, has been comfortable with the information that it's received from the Debtor.

Therefore, at this point, Your Honor, from the Committee's perspective, there doesn't seem to be any bona fide purpose to making the Debtor go through the cost and the expensive effort

that Mr. Pomerantz said would be required to create the Rule 2015.3 reports. And, again, I -- without casting aspersions, it would suggest, based on previous activity, that there's really only a nefarious purpose for what is being pressed before Your Honor today.

So, Your Honor, again, we support the Debtor's position. I absolutely agree with Mr. Pomerantz's arguments. We would request that Your Honor, you know, enter the relief that the Debtor is requesting today.

THE COURT: All right. And Mr. Clemente, I just --

MR. CLEMENTE: Yes?

THE COURT: I just want to seal in my brain the context that I think applies here. The January 2020 corporate governance settlement order. In there, we all know there were lots of protocols about lots of things, but one of them or a set of the protocols dealt with transfers of assets in these nondebtor subs or entities controlled by the Debtor. And, of course, Mr. Pomerantz alluded to this, but I'm just going to make sure I'm crystal clear on what I remember. You know, the whole -- well, it was a protocol that the Committee would have to be consulted on transfers of assets of those nondebtor subs, those nondebtor controlled entities, and, you know, there was a discussion that 363 doesn't apply, of course, to nondebtor assets, and you could really argue all day, even if it did apply, about whether these are ordinary course or non-

ordinary course because of the business Highland is in. But the Debtor negotiated with you and your clients: We're going to have full transparency to let you all get notice of transfers of assets of these subs, and you could even object and bring a motion. I mean, you can file some sort of pleading, even though we were not so sure 363 under any stretch might apply.

Am I correctly restating the context that -- you know, Mr. Pomerantz alluded to it, but I just want to make sure I'm clear and the record is clear.

MR. CLEMENTE: Your Honor, you are -- you are absolutely correct. There's a very complex set of protocols that we painstakingly negotiated with the Debtor that had different categories depending upon the asset --

THE COURT: Uh-huh.

MR. CLEMENTE: -- and the Debtor's ownership and its relationship with respect to the nondebtor entities or the related parties. That required the Debtor to come to the Committee in certain sets of circumstances and explain a potential transaction and get the input from the Committee, and either the Committee could consent to the transaction, or if the Committee did not consent to the transaction, the Debtor could seek relief from the Court.

Your Honor will remember that, in fact, one of the hearings we had with respect to the monies that were placed in

the Court registry arose out of the protocols. So the protocols worked from that perspective in requiring the Debtor to come to the Committee, allow the Committee to make an evaluation, and then the Debtor would make a decision from the perspective of how it wished to proceed.

So, Your Honor is absolutely correct. That was all part of the governance settlement that was negotiated back in January. And from the Committee's perspective, again, it hasn't always been lemon water and rose petals, but we believe that those protocols worked, and worked to provide the Committee with information so it could appropriately evaluate what the Debtor was doing.

THE COURT: All right. So I'm correct, you would say, in thinking there was a lot of transparency built in? It didn't always work smoothly in the beginning, and as we know, there were document production requests, many of them from the Committee. That all came to a head last July, with more protocols put in place. But lots of transparency was negotiated by the Committee with regard to all of these controlled entities and subs?

MR. CLEMENTE: That was a critical, Your Honor, that was a critical component of the governance settlement.

THE COURT: Okay.

MR. CLEMENTE: Because that was obviously the impetus for us wanting that governance settlement, so we could get

that transparency.

So, to answer your question, Your Honor, yes, the protocols served that function of providing the Committee with information on transactions that the Debtor was proposing to enter into.

THE COURT: Okay. And of course, there was a waiver of the privilege -- I don't know if that's the word; I guess that is the right word -- with regard to possible estate causes of action. Maybe I'm getting into something unrelated. Maybe I'm not. But that was part of the protocol, too, right, the Debtor would waive its --

MR. CLEMENTE: That's correct, Your Honor.

THE COURT: -- privilege with regard to --

MR. MORRIS: Your Honor, I apologize for interrupting. This is John Morris from Pachulski Stang. I just want to recharacterize that a bit.

THE COURT: Okay.

MR. MORRIS: It's not a waiver of the privilege. We agreed to share the privilege --

THE COURT: Share the privilege. Okay.

MR. MORRIS: -- with the Debtor. The Debtor --

MR. CLEMENTE: I --

MR. MORRIS: I'm sorry to -- sorry to correct you, but it's a --

THE COURT: Well, no, --

MR. MORRIS: -- very important point.

THE COURT: -- that's why I hesitated on that word. I wasn't sure if that was the word, the concept.

MR. MORRIS: There's no waiver.

THE COURT: Okay. Okay. I'm not always --

MR. CLEMENTE: That is -- and that is correct, Your Honor.

THE COURT: Okay.

MR. CLEMENTE: Mr. Morris is correct. As are you.

THE COURT: Okay. So I'm asking you, is all of this protocol that was in place, I mean, is it reasonable for me to think maybe that's the reason you all never pressed the 2015.3 issue, because you were getting a full look, as best you could tell, and more? You were getting more information, perhaps, than these reports would have provided, even. Is that fair for me to think?

MR. CLEMENTE: It is fair for you to think that, Your Honor. We viewed the protocols as our mechanism to get the information that was necessary for the Committee to evaluate the transactions that the Debtor wanted to engage in. And so we were looking to the protocols, and in fact, I think the protocols were very broad in certain respects, and we were not thinking about the Rule 2015 reports, nor would we have said that that would have been a substitute for negotiating those protocols and implementing them.

THE COURT: Uh-huh.

MR. CLEMENTE: So that's how the Committee was looking at it, Your Honor.

THE COURT: Okay. All right. Well, okay. Mr. Draper, I'm going to come back to you. You get the last word on that.

MR. DRAPER: Thank you. First of all, the answer is yes, there are extensive protocols between the Debtor and the Committee. I one hundred percent agree with you. And the other point I'd make with that is this information is a scaled-down version of what they're giving the Committee on a regular basis. So the argument that it would take hundreds of man hours and millions of dollars to do that is absolutely not true. This information, in large measure, even vaster portions of it have already been given to the Committee. Number one.

Number two, we as lawyers are literalists --

THE COURT: But I presume not in this format. I presume not in the format of filling out the form A through E exhibits. I mean, maybe it's an email.

MR. DRAPER: Well, --

THE COURT: Maybe it's a phone call.

MR. DRAPER: -- it's not in a form -- no, there is -- there is -- they both have financial advisors who I'm sure you're going to see whopping fee applications from who have

pored through all of this. My bet, and I'd bet big dollars on this, is that financial -- balance sheets are given to them on a regular basis, statements of financial information for subsidiaries and changes in cash flow are given to them. Otherwise, there's no way the Creditors' Committee could monitor what's going on and what's happening.

So, really, this is -- this is not a phone call thing. There is real financial data that's being given that is available and can be given on a scaled-down basis.

My real point of this is we as lawyers are literalists until it suits our purposes not to be literalists. There is no exception in 2015.3 for information being given to a creditors' committee. In fact, when you look at 2015.3, it basically figures there is information going to a creditors' committee. This is for the others who don't have access to that information.

And the interesting part of that is, as the Court's aware, the Bankruptcy Code was amended that if I had gone to the Creditors' Committee and made a request as a creditor, I probably have a right to get even more information than 2015.3 allows me to get.

Next, which is the giant smokescreen. We're basically dealing now with the gee, Mr. Dondero's a bad guy; gee, they want this information because they want to uncover what we know. That's just not true with respect to these reports. If

you look at what the reports do, the reports start from the day that the case was filed and ask for changes in financial condition from the day the case was filed going forward. It is all postpetition in its effect. And to the extent they've uncovered things that are incorrect in the Debtor's schedules, the truth is the amendment of the schedules is warranted. 2015.3 does not deal with prepetition activity in any way, shape, or form. They are balance sheets that ask for -- or changes in financial condition that go from the filing of the case, or seven days before, and require reports every six months.

So this giant smokescreen that there's a massive fraud, there's all this other stuff that's been uncovered, is just not true. It is an attempt to cover up or give an excuse that is unwarranted with respect to why they haven't done the 2015.3.

Next point. There is no secret stuff that's being done. There's no valuation that we're asking for. 2015.3 asks for balance sheet information. So, in fact, if they own ten pieces of property, 2015.3 would bind them together in a balance sheet and say, this is the total real estate that we have. If an entity has 15 entities under its umbrella, it would have a balance sheet entry. Assets and liabilities. It's not broken down. The assets are probably at book value or some sort of mark to market.

But honestly, this is -- there is no way that this information gives anybody any benefit in terms of any bidding.

And the other point that's problematic is anybody who wants to buy these assets would walk in and say, look, I want a data room, let me look at this. If what Mr. Pomerantz is saying, which I don't understand, is that we're not going to let a Dondero entity buy an asset, notwithstanding the fact that they may pay more for the asset than somebody else would, I think that's -- I have a huge problem with that. We're here for monetization of assets. We're here to maximize the value. And if, in fact, somebody walks in that may be a tangentially-related Dondero entity and is willing to pay more, they should be thrilled with that fact, not jettison it or disregard it. That is -- their job is to maximize value, not minimize value through a controlled sale process.

Again, I'm looking at the Code section. I'm looking at 2015.3. It basically says what it says. It's designed to give basic financial information. It has nothing to do and offers no disclosures of anything Mr. Pomerantz has thrown up before the Court or that Mr. Dondero or any of his entities or people are alleged to have done.

And the last is, if in fact there's financial information that's incorrect in any of these entities, I question what the Debtor's financial advisors have been doing for the last months. Honestly, they should be poring over these books. If

they find a problem, they should correct 'em and address them. And so there's no basis under the Code. We've -- what's been given to you and what their argument is is an excuse for not doing something they should have done. It can't be couched as to who's asking. It is systematic in nature. And what's been thrown up before the Court in Mr. Pomerantz's arguments are just not true when you look at what the form requires.

THE COURT: You know, I can't remember ever being in a contested matter involving this rule. And I was kind of pondering before coming out here, I wonder why that is. And, you know, I'm thinking the vast majority of our complex Chapter 11s that involve many, many, many entities, they all file. Okay? You know, they're kind of a different animal, if you will, from Highland.

You know, we know how it normally works. You've got maybe the mothership, holding company, and many, many subs, and you've got asset-based lending, right, where, you know, maybe the majority of the entities in the big corporate complex are liable, so you just put them all in. Okay?

We don't have -- I have not experienced a lot of Chapter 11s where you have basically just the mothership and then you keep subs and lots of affiliates out. Okay? So I'm thinking that's one reason.

Another thing, I can't remember how old this rule is. Does anyone -- can anyone educate me? How long has this rule

been around?

MR. DRAPER: Your Honor, this is Douglas. I think it came in after Lehman Brothers. And it came --

THE COURT: Uh-huh.

MR. DRAPER: It was put in to deal with off-balance sheet items.

THE COURT: Uh-huh.

MR. POMERANTZ: 2008, Your Honor.

THE COURT: 2008?

MR. DRAPER: Which is exactly right. It --

THE COURT: Okay.

MR. DRAPER: Yep.

THE COURT: Okay. So that, that's another reason. Because I was thinking like *Enron* days. You know, that's a big giant, a gazillion entities, and, of course, a whole huge slew of them were all put in.

So, there's not a lot of case law. And you know, maybe there are other situations where a judge ruled on this issue but without issuing an opinion. So, anyway, that's neither here nor there.

Mr. Draper, you've urged me to focus on the literal wording of the rule. It's "shall" language. You've talked about essentially the integrity of the system as being the reason for the rule. You've told me not to accept the Debtor's "bad guy" defense, you know, as an excuse. This is

just Dondero, you know, wanting the information, and therefore I should discount the motivations here.

But let me tell you something that is nagging very, very much at me, and I'll hear whatever response you want to give to this. I just had an all-day hearing a couple of days ago, and this involved the Charitable DAF entities and a contempt motion the Debtor filed because those entities went into the U.S. District Court upstairs in April and filed a lawsuit that was all about Mr. Seery's alleged mismanagement with regard to HarbourVest.

So what I'm really worried about is the idea that your client wants this information to cobble together a new adversary alleging mismanagement. How can I not be worried about that?

MR. DRAPER: It's real simple. Because the information that's here doesn't go to management decisions. The information that's requested here has balance sheet items. It has to do with changes in cash flow. It is not something that you can cobble together a claim, because it doesn't deal with discrete transactions. It deals with only transactions between affiliated entities. It only deals with disclosure of administrative expenses that are incurred by a subsidiary for which the Debtor is liable. It only deals with changes in condition on a go-forward basis and a balance sheet. It doesn't say, gee, we have to disclose that, with respect to

HarbourVest or with respect to the MGM stock or whatever, we're doing A, B, or C. It doesn't go there.

That's why I asked the Court in my opening, look at the form. Because the form is what I'm asking for adherence to. I'm not asking the form to be varied. I'm just asking the form to be approved -- to be addressed. And the form controls. It is not something you can cobble together a complaint with.

THE COURT: Well, you left out when I asked, you know, did your client have an administrative expense claim in this case, and Mr. Pomerantz corrected the record on that. Your client, while it's not a lawsuit in another court, has filed an administrative expense that there was mismanagement of a nondebtor sub or nondebtor controlled entity, --

MR. DRAPER: That -- that's --

THE COURT: -- Multistrat.

MR. DRAPER: No, that's not -- if -- if I understand the claim -- again, I didn't file it, and I forgot, that's an oops on me as opposed to an oops on Mr. Seery for not filing, and I apologize for the Court for that. But if I understand that claim, is when he acquired whatever he acquired, he should have offered it to the other -- to the other members of the -- that group. Again, I'm not -- that's not -- I'm a bankruptcy lawyer, as the Court's well aware. This other stuff is beyond me.

But the truth is, my understanding of the claim, it goes to who should have benefited by the transaction and whether the Debtor got CLO interests or got cash for it is irrelevant and that it should have been offered. That's what I understand the claim.

THE COURT: Okay. So the same sort of theory --

MR. DRAPER: So, the claim --

THE COURT: -- as HarbourVest? The same sort of theory as HarbourVest?

MR. DRAPER: No. No. Well, no, I'm just saying, that's -- that's what -- again, you're asking me for something that's outside my expertise.

THE COURT: Okay.

MR. DRAPER: Yes, we may have filed a claim.

THE COURT: Who filed a proof of claim?

MR. DRAPER: And the point I'm making --

THE COURT: Who filed the proof of claim?

MR. DRAPER: What? I did not -- I have not filed the proof of claims that were asserted by Dugaboy.

THE COURT: I mean, --

MR. DRAPER: I think that was --

THE COURT: -- request for administrative expense. Who filed this? You say you don't -- you didn't file it.

MR. DRAPER: I did -- I don't think I did.

MR. POMERANTZ: Your Honor, to clarify, it was filed

as a proof of claim, but it related to postpetition actions. And, again, I don't have it before me. This has been raised --

MR. DRAPER: I --

MR. POMERANTZ: -- several times in the confirmation hearing when Mr. Draper was there, so I guess he must have just forgotten about it. But I don't know who actually filed it. But it is -- it is -- it is a proof of claim that is on the record.

MR. DRAPER: Mr. Pomerantz, God forbid that I should forget something. I'm sure you never have.

THE COURT: Okay. Well, here's what I'm going to do. I'm not going to grant the relief being sought today, but I will continue the hearing to a date in early September. And Mr. Draper, you can coordinate with my courtroom deputy, Traci Ellison, with regard to a setting in early September.

I can assure you it's not going to be until after Labor Day. I think Labor Day falls on the 6th, maybe, and I plan to be far away the first few days of September, far away from this country.

But here are a few things I want to say. First, I care about transparency, and I tend to strictly construe a rule like this. I think, you know, it should be very clear for anyone who's appeared before me that I really like -- I say open kimono. I probably shouldn't use that expression, but I

use that expression a lot. You know, when you're in Chapter 11, the world changes and you have to be very transparent.

But while I generally feel that way, we have -- as I also always say, facts matter, contexts matter -- and here we are twenty months into a case and we're post-confirmation. This motion was filed post-confirmation. So I acknowledge that the Rule 2015.3(b) has the requirement of filing reports as to these nondebtor controlled entities until the effective date of a plan. We're so -- we're presumably so very close to the effective date that I think I should exercise my discretion under Subsection (d) of this rule to, after notice and a hearing, vary the reporting requirements for cause. I think there's cause, and that cause is I think we're oh so close to the effective date. That's number one. Number two, we're down to 12 staff members. And I've heard that 150 entities may be implicated, and I don't think that is a necessary and reasonable use of staff members at this extremely late juncture of the case.

And my third reason for cause under Subsection (d) of this rule is we have had an active, a very active Creditors' Committee in this case with sophisticated members and sophisticated professionals who negotiated getting more information, I think more useful information than this rule even contemplates with the various form blanks.

Now, obviously, I'm continuing this to September because,

if we don't have an effective date by early September, well, context matters, maybe that causes me to view this in a whole different light. But that is the ruling of the Court.

You know, I just want to say on behalf of the U.S. Trustee, I don't know if anyone's listening in, but it was an unfortunate use of words earlier, I think, saying, you know, secret deal with them. And I use unfortunate words all the time. I'm not being critical. But I just want to defend their honor here. Oh my goodness, they --

(Phone ringing.)

THE COURT: -- exercise integrity in every case I see to the utmost degree, and I suspect they were satisfied that the Committee was getting so much access to the Debtor, with the sharing of the privilege and the protocols, that it just didn't seem necessary in the facts and circumstances of this case to require strict compliance with 2015.3.

So I'm going to ask Mr. Pomerantz to upload a form of order reflective of my ruling. And, again, if --

Whose phone is ringing? Is there something going on with our equipment?

THE CLERK: No.

THE COURT: I don't know where that phone ringing is coming from.

THE CLERK: I can hear it.

THE COURT: Okay. So, you'll get a day from Ms.

Ellison in -- after labor day, and we'll see where we are. This will be a moot matter as far as I'm concerned if we've had an effective date at that point.

(Continued phone ringing.)

MR. POMERANTZ: Your Honor, one clarification I would ask to have. I don't think -- I think Your Honor intends that to be a status conference, so to save the Debtor from, you know, spending time in doing a pleading, and Mr. Draper as well, and Your Honor from reading them, I would say that there should be no pleadings filed in advance. We will appear before Your Honor with a status conference. And to the extent Your Honor determines there's further briefings or further issues that need to be decided, you could decide at that point. But no further briefing.

THE COURT: Okay. I think that is a fair request.

(Ringing stops.)

THE COURT: And so that -- that is the way we'll set this up. Status conference. No further pleading.

MR. DRAPER: Your Honor?

THE COURT: All right? Mr. Draper?

MR. DRAPER: Can I make a request, Your Honor? Can I change -- can I make a comment about the Court's ruling? Because I want to be transparent about this. And I think the Court's ruling, I would request that you shapeshift it a little bit.

If, in fact, you're going to take the position that if the plan goes effective, this issue -- this -- this motion is moot and will be denied, I think, quite frankly, why don't we enter that order now, rather than waiting. Because that at least gives me the ability to address the issue.

I don't think the rule has a waiver of it on the effective date. Let's -- let's get the issue before the -- before everybody. Because, again, as I said, if in fact your position is that if it goes effective I'm going to deny the relief and claim it's -- and assert it's moot in a ruling, I'm fine, let's get the ruling now. Because -- because my position is that that waiver -- there is no basis for that waiver due to time. The rule requires being filed through a point.

And, look, again, that way I'm not wasting the Court's time. We're not rearguing it. If we're not having new pleadings, let's get it over with.

MR. POMERANTZ: Your Honor, I would reject that. It's pretty transparent what Mr. Draper wants. He wants another appeal --

THE COURT: Uh-huh.

MR. POMERANTZ: -- because he wants to go to another court, and he's unhappy that Your Honor has essentially given an interlocutory order that he will be stuck with.

So we have, I think, close to a dozen appeals. We're

spending millions of dollars. And I find -- I find Mr. Draper's request, quite honestly, offensive, that it would require us to -- a lot more time and money on an issue we shouldn't. So, I would ask Your Honor to reject Mr. Draper's request.

THE COURT: All right. I do --

MR. DRAPER: And again, my --

THE COURT: -- reject it. That's exactly where my brain went, Mr. Draper. This is an order continuing your motion. Okay? And we'll have a status conference in early September on your motion.

And you know, again, I'm just letting you know my view it will be moot if the effective date has occurred, and then we'll get some sort of order to that effect issued at that time. And then I guess you'll have your final order that you can appeal if you want at that point.

The last thing I'm going to say is this. Mr. Draper, as I'm sure you remember, at some point many weeks back -- I think it was in January, actually -- I ordered that Mr. Dondero should be on the WebEx, or if we're live in the court for a hearing, live in the court, any time there's a hearing where he, his lawyers, have taken a position, filed an objection or filed the motion himself. If he and his lawyers are requesting relief or --

MR. DONDERO: I'm here.

THE COURT: -- objecting to relief, that he has to be in the courtroom.

I am now going to make the same requirement with regard to the trusts. Any time the trusts file a pleading seeking relief, object to a pleading seeking relief, file any kind of position paper, I'm going to require a trust representative to be in court.

Now, I don't know if that's the trustee, Nancy Dondero. I don't know if that's Mr. Dondero's wife, a sister, who that is. But it'll either be her or whoever the trustee is or Mr. Dondero as beneficiary. But it has gotten to that point. Okay? And --

MR. DRAPER: Your Honor?

THE COURT: And it's not -- it's not personal. I have said this before. I've done this in many cases. If we have a party who feels so invested in what's going on that they're waging litigation, litigation, litigation, at some point very often I will make this order. Like, okay, we're all spending a lot of time on what you want, so you need to show you're invested in it and be here with the rest of us. And, you know, potentially we're going to want testimony in certain contexts. Okay?

So I don't know who that human being is for the trusts, but I'm now to the point where I'm making that same order that I did with regard to Mr. Dondero personally. All right?

MR. POMERANTZ: Your Honor?

THE COURT: Yes?

MR. POMERANTZ: Your Honor, just to clarify, that's Mr. Dondero and the trustee.

And I would also ask Your Honor, I know Mr. Dondero will say that he was on, and that's what Mr. Taylor is going to say, he was on audio. I think, in order to have them actively participating, they should be on the video the entire hearing. Because if they're just on the phone on mute, Your Honor is not able to really tell if they are really listening. So I would ask Your Honor to clarify to both Mr. Draper and Mr. Taylor that, for both the trustee and Mr. Dondero, they should be on video.

THE COURT: All right.

MR. DRAPER: Your Honor, Mr. Dondero is on. You can see him down in the lower screen.

THE COURT: All right. Just so you know, I mean, the screen I'm looking at is not quite the same screen you're looking at. We have this Polycom. And I show that there are, you know, thirty-something people, but I only see the people who have most recently talked. Okay? So, I see you, Mr. Draper. I see Mr. Pomerantz. I see Mr. Clemente. A few minutes ago, I saw Mr. Morris. But, you know, we've set it up where I'm not overwhelmed with blocks; I'm just seeing the people when they speak.

MR. POMERANTZ: Your Honor, and those were the only four people whose videos were on during the entire hearing.

THE COURT: Oh, okay.

MR. POMERANTZ: So I hope Mr. Draper is not going to say that Mr. Dondero was on video, because he was not.

THE COURT: Okay.

MR. DRAPER: No, you can see -- Mr. Pomerantz, what I said is you can see him on the screen here. You can see that he has dialed in. I don't see him jumping up and down or his person.

THE COURT: Oh, okay.

MR. DRAPER: But it is clear that somebody dialed in on his behalf.

MR. POMERANTZ: Well, --

MR. DRAPER: Or he dialed in. He is -- he is present.

MR. POMERANTZ: Exactly. That's my point, Your Honor, that someone may have dialed in on his behalf. And I think Mr. Dondero, for them to have active, meaningful participation, because I think that's what Your Honor is getting at, that they should be here, engaged. And if we were in court like we were the other day, Mr. Dondero would have had to sit in Your Honor's courtroom. And if he is going to take up the time of Your Honor and all the parties, he and the trustee should be really engaged, which you cannot be if

you're only on the phone.

THE COURT: Okay. All right. Well, --

MR. DRAPER: Your Honor?

THE COURT: Go ahead, Mr. Draper.

MR. DRAPER: Mr. Dondero just talked a few moments ago, so Mr. Pomerantz heard him. This is -- this is truly unwarranted. He's appeared, he's here, and he's made a comment to the Court. So, again, we are invested. He was present at this hearing. He heard the hearing. And so, you know, I just don't know where this is coming from. I understand he missed a hearing before, but he is here for this one.

THE COURT: Okay. Well, I'm not going to get bogged down in this issue. I am going to issue an order, though, that is going to be reflective of what I said, and we'll just -- we'll make sure we have him check in or whoever the representative is of the trusts in future hearings and turn the video on and we'll make sure.

Again, this is -- I used the word frustrated the other day. I'm very frustrated. This is just -- this is -- it's out of control. Okay? I ordered mediation earlier in this case. I believed that an earnest effort was put in. But if we're not going to have settlement of issues, you know, I'll address these issues, but everyone who files a pleading, whether it's Mr. Dondero personally or the trusts, the family

trusts, and, of course, we're going to get -- I'm going to go the same direction, actually, with all these other entities. You know, it's -- I've gotten to where I had my law clerk the other day prepare me basically what was like a program from a sports event, you know, who represents which entities, because it's gotten overwhelming. And --

MR. POMERANTZ: Your --

THE COURT: And I mentioned the other day, I'm very close to requiring some sort of disclosures about the ownership of each of these entities, because I -- you know, the standing is just so tenuous, so tenuous with regard to certain of these entities. And I've erred on the side of being conservative and, you know, okay, we maybe have prudential standing, constitutional standing, even if it's kind of hard finding statutory standing under the Bankruptcy Code. But it's gotten to the point where it's just costing too much time and expense for me to not press some of these issues and hold people accountable.

So, Mr. Pomerantz, were you about to say something? I know that we had talked at another hearing about the Court maybe requiring some sort of disclosures for me to really understand party in interest status maybe better than I do.

MR. POMERANTZ: That, Your Honor, was where I was going to go before Your Honor made the comment. Your Honor made that comment a few weeks ago. I think, since then, quite

honestly, nothing really has changed. And I think it would be helpful -- it would be helpful for the Debtor, and more importantly, I think it would be helpful to the Court to have a list that you can refer to every time we are in a hearing of every entity that has appeared that Mr. Dondero has a relationship with, who the lawyers are, what the claims they filed, what the status of the claims they filed, and maybe even what litigation they are in pending with the Debtor.

We're happy with -- part of it we could prepare. But I would think Your Honor should order that from Mr. Dondero's related entities, because it might cut through a lot of it, and give Your Honor the information Your Honor needs and the context and perspective as you're hearing a lot of these motions.

THE COURT: All right. Well, is there anything else before we move on to the other matter? I'm about to close the loop on this by saying I am --

MR. TAYLOR: Your Honor? Your Honor?

THE COURT: Who is that speaking?

MR. TAYLOR: This is Clay -- this is Clay Taylor, Your Honor, --

THE COURT: All right.

MR. TAYLOR: -- representing Jim Dondero individually.

THE COURT: Okay.

MR. TAYLOR: And I just wanted to be heard. I've just listened in, even though Mr. Dondero was not the movant, because sometimes issues like this do come up where his name is thrown about.

First of all, Jim Dondero was indeed, as Mr. Draper said, was indeed present. He did indeed try to speak. I kind of overrode him. And because, you know, he needs to speak through his lawyer most of the time and shouldn't address the Court directly. But I wanted to let you know that Mr. Dondero was indeed on the line, was actively listening, and was participating.

As far as additional disclosures, it would be, I would just note, somewhat ironic if the Court denies the motion for what appears to be mandatory disclosures under Rule 2015.3 but then imposes additional disclosure requirements on somebody -- on another party, without any rule stating that there is such disclosures. It just -- it strikes me as ironic, and I would like Your Honor to consider that, at least, as Your Honor says, context matters.

You know, that's the context in which this arises. And we would just ask Your Honor to reflect upon that before she imposes additional duties upon my client.

But there is -- and the Debtor has asked for the response to be taken as a motion for leave to not comply with a rule, but yet Mr. Seery is not here. The UCC regularly

participates. Its members are not here. And so I just, to the extent Your Honor is going to impose duties upon certain parties, then what's good for the goose is good for the gander, Your Honor.

THE COURT: All right.

MR. POMERANTZ: Your Honor, I would point out that Mr. --

THE COURT: I respect your argument. I always respect your arguments, Mr. Taylor.

By the way, you aren't wearing a jacket. You know, next time you need to wear a jacket. And forgive me if I seem nagging, but I'm letting you all know, if you all are soon going to be having lots of litigation in the District Court, I promise you the district judges are way more formal than me and sticklers for every rule. You'll also be doing everything live in the courtroom, too. I'm just letting you know that.

But while I respect your argument, apples and oranges. I mean, the 2015.3 rule, not only is it not -- not -- I wouldn't say mandatory, since the Court has discretion for cause to waive the requirement. But it's a very onerous set of forms that would have to be filled out for 150 entities by 12 staff members. I don't really consider that the same as the disclosure that I'm now going to require.

But my law clerk and I will -- we'll craft a form of order that will be specific as far as what I'm going to require.

And, again, I think it's way beyond the point of this being necessary. And just so -- again, I'm wanting to explain this thoroughly. You know, standing -- for the nonlawyers; I don't know how many nonlawyers are on the phone, WebEx -- it's a subject matter jurisdiction thing. Okay? And, you know, if there's a dispute and someone involved in a dispute technically doesn't have standing, that means the Court didn't have subject matter jurisdiction to be adjudicating it. Okay? That's first year law school concept.

And it's been mentioned we have lots and lots of appeals, and I can promise you, if you've never been through the appellate process, that's the very first thing they'll look at -- you know, District Court, Fifth Circuit, any Court of Appeals -- because they have an overwhelming docket. And if there's a reason to push out this appeal before then because of lack of subject matter jurisdiction, which would include lack of standing, of course they are going to quickly get it off their plates because they have other things to get to, like criminal matters that are, you know, their top priority because of the Constitution.

So this has been an evolving thing with me. At some point, I feel like the Courts of Appeals that are involved with all of these appeals, they might be really, really zeroing in on the standing of parties more than perhaps even I have. So I want to do my job and I want it clear on the

record, this is why this person has standing or doesn't have standing. Okay? I just feel like we've gotten to that point. And so we'll issue an order in that regard, and it will, I promise you, be crystal clear.

Anything else?

MR. POMERANTZ: Your Honor, one last point. Mr. Taylor insinuated that the board is not present here, which is incorrect. A member or two members or three members of the board have been present at every hearing before Your Honor. And that's without an order requiring them to do so, because they are -- they are interested, they are engaged. Mr. Dubel is on the phone. He has been on the phone. I think this may have been only the second hearing that Mr. Seery has missed, felt it wasn't necessary to take him away from his running the company. So the Debtor has been, through its board members, fully engaged, and I just wanted Your Honor to know that, that we would never have a hearing before Your Honor without at least one member of the independent board listening in and participating as necessary.

THE COURT: All right. Thank you.

All right. Well, let's move on to the other contested matters, or adversary proceeding matters, I should say. And they're Adversary 21-3006 and 21-3007. We have Motions for Leave to Amend Answers. And do we have Ms. Drawhorn appearing for that motion or those motions?

MS. DRAWHORN: Yes, Your Honor. Lauren Drawhorn with Wick Phillips on behalf of Highland Capital Management Services, Inc. and NexPoint Real Estate Partners, LLP, formerly known as HCRE Partners, LLC.

THE COURT: All right. And who will be making the argument for the Debtor on this one?

MR. MORRIS: John Morris, Your Honor; Pachulski Stang Ziehl & Jones; for the Debtor.

THE COURT: All right. Are there any other appearances on this?

Okay. Ms. Drawhorn?

MS. DRAWHORN: Yes, Your Honor. We are -- so, my clients are seeking leave to amend the answer to add two affirmative defenses. As you know, under Rule 15(a), there is a bias towards granting leave, and leave should be freely granted unless there's a substantial reason to deny it.

The main factors that are considered in determining whether there is a substantial reason to deny a motion for leave to amend are prejudice, bad faith, and futility.

Here, there is no prejudice to the Plaintiff. Under the case law, if the -- as long as a proposed amendment is not presented on the eve of trial, continuing deadlines or reopening discovery does not constitute sufficient prejudice to deny leave.

Here, discovery does not close until July 5th for Highland

Capital Management Services, and it does not close until July 26th for NexPoint Real Estate Partners.

The Plaintiff has not -- neither party has taken any depositions in this case. And we are open and willing to extend the discovery deadlines if necessary. We think that discovery can be extended as necessary without extending any dispositive motion deadline or the docket call which are set in August. Dispositive motions are August 16th for Highland Capital Management and September 6th for NexPoint Real Estate Partners, with docket call in those cases being October and November.

So there's significant time. If the -- if the party just wants to conduct additional written discovery, I think that that -- they would be easily be able to do that.

We're also open to continuing all the deadlines in this case, and practically speaking, those -- the deadlines may be continued depending on what happens with the pending motion to withdraw the reference and the motion to stay.

So we don't think -- we don't see any reason why our amended additional affirmative defenses will result in any prejudice to the Plaintiff, and don't see that as a reason -- a substantial reason to deny the motion for leave.

There is no bad faith here. The motion for leave was filed two months after our original answer. Again, this is not a situation where we're trying to add a new defense on the

eve of trial. We're not even waiting until after discovery is closed to try and add this new defense. And it's not after one of our prior defenses failed. Instead, we've been conducting additional investigations, preparing for written discovery. And as set forth in more detail in the Sauter declaration that was filed yesterday, we discovered these additional defenses through that additional investigation.

So there's certainly no bad faith here in adding these two defenses. We are just trying to make sure that we can prove up our defenses and prove up our case on the merits, as we need to.

And then the last factor, the new affirmative defenses we're seeking to add, they're not futile. I cited some cases in the pleadings. There are some judges in the Northern District of Texas that refrain from even evaluating futility at this stage, at a motion for leave to amend stage, preferring to address those on a motion for summary judgment situation. But even when it is considered, futility looks more at is there a statute of limitations that prevents the claim from being successful, or does the court lack subject matter on its face, based on this defense? And that's not the case here.

The Debtor -- the Plaintiff tries to argue on the merits of our affirmative defenses, and a motion for leave to amend is not a basis for that. This isn't a motion for summary

judgment. This is just -- just a motion for leave to add these defense, and they can certainly address the merits later on in the case.

So we think we provided sufficient notice in our proposed amendment. I mean, our proposed amended answer. To the extent we need to add any specifics, we are certainly open to. We've noted them in our reply. The ambiguity is -- is to the notes as a whole. We noted the Highland Capital Management, there's two notes that are signed by Frank Waterhouse without indication of corporate capacity, which creates some ambiguity. The notes reference other related agreements, which create some ambiguity. So we think there's sufficient pleading of these new defenses to support leave to amend and address those on the merits.

And then the condition subsequent defenses, while we -- the schedules and the SOFAs, the notes related to that reference that some loans between parties and related -- to affiliates and related entities may not be enforceable, we think that supports our position and this defense here, now that we've furthered our investigation and heard about this additional subsequent agreement that supports the condition subsequent.

And the opposition, the Plaintiff's opposition notes that there has been some discovery on this defense. It's similar to one that's asserted in a related note adversary. And

while, again, they try to assert the merits and the credibility of certain testimony, that's -- that's a decision, credibility of a witness is a decision for a fact finder and not for this stage of the proceedings and not for a motion for leave to amend.

So we don't believe there's a substantial reason to deny leave. Again, under Rule 15, leave should be granted freely. And so we would request that the Court grant our motion for leave to amend so that we can have our amended answer and affirmative defenses in this case.

THE COURT: All right. Well, Mr. Morris, you know, the law is not too much in your favor on this one. So what do you have to say?

MR. MORRIS: I have to say a few things first, Your Honor. The notes are one of the most significant assets of the estate. As the Court will recall at the confirmation hearing, Mr. Dondero and all of his affiliated entities objected to confirmation on the ground -- challenging, among other things, both the liquidation analysis as well as the projections on feasibility going forward.

One of the assumptions in those projections and in the liquidation analysis was indeed the collection of these notes in 2021. They all sat on their hands, attacked the projections, attacked the liquidation analysis, but never on the grounds that the notes wouldn't be collectable in 2001

[sic], never informing the Court that there was some agreement by which collection would be called into question, never ever disclosing to anybody that the plan might not be feasible or the liquidation analysis might not be accurate because these notes were uncollectable.

So what happened after that, Your Honor? We commenced these actions. Actually, before the hearing. We actually commenced these actions before the confirmation hearing, when they sat silently on this.

And Mr. Dondero's first answer, because this is all very important because they say that they're -- they're piggybacking on Mr. Dondero. Mr. Dondero's first answer to the complaint said, I don't have to pay because there is an agreement by which the Debtor said they would not collect. It's in the record. It's attached to my declaration. And that was it. Full stop. I don't have to pay because the Debtor agreed that I would not have to collect.

So we served a request for admission. Admit that you didn't pay taxes. He realized, okay, that defense doesn't work, so he changes it completely and he amends his answer. Now the amended answer says, I don't -- the Debtor agreed that I wouldn't have to pay based on conditions subsequent.

And we said, what are those conditions subsequent? Please tell us in an interrogatory response. And under oath, Mr. Dondero said, I don't have to pay if the Debtor sells their

assets in the future. At a favorable price, I think it says. Again, this is in the record. And we asked him under oath, who made that agreement on behalf of the Debtor? And he said, I did.

And Your Honor will recall that we had a hearing on that very defense, on the motion to compel, where they said Mr. Seery has to come in and testify to the defense that Mr. Dondero made this agreement with himself. And then the following week, on a Tuesday, we had the hearing on the motion to withdraw the reference, and Your Honor said finish discovery, because we told you discovery was going to be concluded on Friday with Mr. Dondero's deposition. You know what they did, Your Honor? The night before the hearing, they amended Mr. Dondero's interrogatory. Again, these are sworn statements. They amended it again to say he didn't enter the agreement on behalf of the Debtor; Nancy Dondero, his sister, did.

And then I took his deposition. And we're going to get to that in a moment, because I'm going to put it up on the screen so you can see these answers, Your Honor. And I say this by way of background because it goes to both good faith -- or, actually, bad faith -- as well as the lack of a bona fide affirmative defense here.

This is -- there are five notes litigation. One against Mr. Dondero. So that's package number one. And they're

represented by the Stinson firm, who is signing all of these things. The Stinson firm is out there claiming that in good faith each of these -- each of these amendments, each of these amendments to the interrogatories, are in good faith. They're not in good faith, Your Honor. They're just not.

And the Bonds firm.

Then bucket two is what we have here today. That's HCRE and Highland Capital Management Services. They're represented by Ms. Drawhorn. I think the Stinson firm has now also entered an appearance in those two adversary proceedings.

And the other two are against the two Advisors. More entities controlled by Dondero. And Mr. Rukavina, I believe, last night filed his motion to amend to add these same defenses.

Okay? Is this good faith? I don't think this is good faith.

Let's look at Mr. Dondero's testimony so that the Court has an understanding of what we're talking about here. I think I have Ms. Canty on the phone, and I'd ask her to go to Page 178. 3. Just going to read (garbled) so you can see. This was Mr. Dondero's testimony the day after telling me that he amended his interrogatory -- sworn interrogatory answer to say that he didn't enter the agreement on behalf of the Debtor but Ms. -- but Ms. Dondero, his sister, did.

Question. Are we -- 178, please.

MS. DRAWHORN: Your Honor, I would --

MR. MORRIS: Question. Please --

MS. DRAWHORN: This is not testimony in this adversary and I was not -- my clients were not present at this deposition that Mr. Morris is referring to, so I --

MR. MORRIS: Your Honor, with all due respect, she's interrupting me, and I would ask her to allow me to finish my presentation and then she can make whatever comments she wants. Because -- because --

MS. DRAWHORN: Well, I'm objecting to this testimony --

THE COURT: Okay.

MS. DRAWHORN: -- coming into evidence.

THE COURT: Okay. So your objection is -- if you could just articulate your objection for the record, please, Ms. Drawhorn.

MS. DRAWHORN: I would object to this -- this deposition is not in this proceeding, this adversary proceeding, either of these two the adversary proceedings, and my client was not present at this deposition, so I would object to it as hearsay.

THE COURT: Response?

MR. MORRIS: Your Honor, if I may, I think this -- this points to just one of the fundamental problems that we have here. As we pointed out in our objection, the Debtor, as

we sit here right now, still has no notice of the facts and circumstances surrounding this alleged agreement. We still don't know who entered into the agreement on behalf of the Debtor. We don't know what the terms of the agreement were. We don't know when the agreement was entered into. We don't -- right?

If they're going to assert that there's an agreement -- and they seem to be piggybacking on this conversation between Mr. Dondero and his sister. If there's a different one, they need to say that right now. They need to put their cards on the table and they need to inform the Debtor who entered the agreement on behalf of the Debtor pursuant to which the Debtor agreed to waive millions and millions of dollars without telling anybody.

THE COURT: Okay. I overrule the objection. We can go through the transcript.

MR. MORRIS: So, I'm just going to use part of it, Your Honor. But on Lines 3 to 7:

"Q Did anybody else participate -- did anybody participate in any of the conversations other than you and your sister?

"A I don't believe it was necessary. It didn't include anybody else."

Go down to Line 19, please.

"Q Was the agreement subject to any negotiation? Did

she make any kind of -- any counterproposal of any kind?

"A No."

Page 179, Line 2.

"Q Do you know if she sought any independent advice before entering into the agreement that you have described?

"A I don't know."

Line 23, please.

"Q Do you know if there were any resolutions that were adopted by Highland to reflect the agreement that's referred to in the -- in the answer?

"A Resolutions that -- no. Not that I'm aware of."

Page 180, Line 5.

"Q Did you give Nancy a copy of the promissory notes that were a subject of the agreement?

"A No."

Continue.

"Q Did she ask to see any documents before entering into the agreement that's referred to?

"A I don't remember."

Page 181, Line 19.

"Q Under the agreement that you reached with Nancy that's referred to in Paragraph 40, was it your understanding that Highland surrendered its right to

make a demand for payment of unpaid principal and interest under the notes?

"A Essentially, I think so."

Page 219. I'll just summarize 219, Your Honor. Mr. Dondero has no recollection of telling Mr. Waterhouse, the chief financial officer, or any other employee of Highland that he'd entered into this agreement with his sister pursuant to which the Debtor agreed to not collect almost $10 million of principal and interest.

Now let's -- let's go -- I think it's really -- because it took me an awfully long time to get there. On Page 214 at Lines 16 through 24. This is what the agreement was, because this is -- this is -- this is his third try to describe the agreement. Right? The first time -- it's just his third try, and this is what the agreement is, Your Honor.

"Q Did you and Nancy agree in January or February 2019 that if Highland sold either MGM or Cornerstone or Trussway for an amount that was equal to at least one dollar more than cost, that Highland would forgive your obligations under the three notes?

"A I believe that is correct."

That's -- that's the agreement. It took him three times to get there, but look at -- look at that. He and his sister did that.

And I do want to point out, Your Honor, that in their

opposition that they filed last night, the Defendants claim that Ms. Dondero was authorized because she was -- she was the trustee of Dugaboy and Dugaboy holds the majority of the limited partnership interests in the Debtor and therefore she had the authority to enter into the agreement on behalf of the Debtor.

There is that flippant -- there is just that unsupported statement out there. Section 4.2(b) of the limited partnership agreement says, and I quote, "No limited partner shall take part in the control of the partnership's business, transact any business in the partnership's name, or have the power to sign documents for or otherwise bind the partnership, other than as specifically set forth in the agreement."

So I look forward to hearing what basis there was to submit a document to this Court that Nancy Dondero had the authority to bind the Debtor in an agreement with her brother pursuant to which tens of millions of dollars was apparently forgiven.

Can we go to Page 238? This is the last piece, Your Honor. The Debtor's outside auditors were PricewaterhouseCoopers. There's management representation letters signed by both Mr. Dondero and Mr. Waterhouse attesting that they had given their auditors all of the information necessary to conduct the audit. We will get to that in due course, but these are very important questions

right here.

What page are we on? Is it 238? Okay. So, Line 16, I believe.

"Q You knew at the time -- you knew at the time the audited financials were finalized that Highland was carrying on its balance sheet notes and other amounts due from affiliates?

"A Yep."

And if we could just keep going, Your Honor, you will see:

"Q Did you personally tell anybody at PricewaterhouseCoopers in connection with the preparation of the audited financial statements for 2018 that you and your sister had entered into the agreement with your sister Nancy in January or February of 2019?

"A Not that I recall."

There's a lot more here, Your Honor. I'm really just touching the surface. I am going to take Nancy's deposition later this month. But there is -- this is wrong. This is just all so wrong. For three different reasons. At least. This is not a viable defense and will never be a viable defense.

The audited financial statements carry these loans as assets on the books, without qualification, and they were subject to Mr. Dondero and Mr. Waterhouse's representations.

There is partial performance. These entities that we're talking about today, they made payments on these notes. How do you make payments on the notes and then come to this Court and say the notes are ambiguous? How do you -- how do you make payments on the notes and come to this Court and tell this Court, I just learned that there was an agreement by which I don't have to pay, subject to conditions precedent in the future.

Mr. Sauter submits a declaration in support of this motion. He has no personal knowledge. He states in Paragraph 14 that his review of the Defendants' books and records did not reveal any background facts regarding the notes. Mr. Dondero is the maker on all of the notes except for two of them. Mr. Dondero owns and controls the Defendants. Mr. Dondero was not employed or otherwise affiliated with the Debtor after these actions were commenced. Mr. Sauter takes Mr. Seery to task for telling the Debtor's employees not to take actions that were adverse, and he uses that as his excuse for not knowing these facts. He is the general counsel. He was served with a complaint that alleged that his clients were liable for millions and millions of dollars. His boss is James Dondero. He had unfettered access to James Dondero. Mr. Dondero is the one who signed the notes, except for two of them. There is absolutely no excuse for not doing the diligence to find out from Mr. Dondero that this defense

existed.

And you know why it didn't happen? Because the defense is not real. It is completely fabricated. It continues to change and evolve every single time I -- every single time I talk about these note cases, it's a new defense, it's a different defense, the contours change, somebody else is involved. This is an abuse of process, Your Honor. It is bad faith. It just really is. And somebody's got to start to take responsibility and say, I won't do this. I won't do this.

Somebody's got to stand up and say that, because, I'm telling you, it's not enough, Your Honor, that the Debtor is going to collect all of its fees under the notes at the end of this process. It's not enough, because we're now giving an interest-free loan. These are -- these are notes that are part of the Debtor's plan that nobody objected to, that nobody suggested were the subject of some condition subsequent.

This is not your normal, you know, gee, I'd like leave to amend the complaint. They're simply following what Mr. Dondero did. And I would really ask the Court to press the Defendants to identify specifically who made the agreement on behalf of the Debtors, when was the agreement made, is there any document that they know of today that reflects this agreement, and what were the terms of the agreement? Is it really that he would sell -- if he sells MGM for a dollar over

cost, $70 million of notes get forgiven? How is that possible? How is that possible? It doesn't pass the good faith test. The Court should deny the motion.

Thank you, Your Honor.

THE COURT: Mr. Morris, in all of your listing of allegedly problematic things, one trail my brain was going down is this: Is this adversary going to morph even further to add fraudulent transfer allegations? I mean, if notes --

MR. MORRIS: Here's the --

THE COURT: -- were forgiven or agreements were made --

MR. MORRIS: Yeah, I --

THE COURT: -- that they would be forgiven if, you know, assets are sold at a dollar more than cost, is the Debtor going to say, well, okay, if this is an agreement, there was a fraudulent transfer?

MR. MORRIS: Your Honor, that is an excellent question, one which I was discussing with my partners just this morning. You know, we have to -- we're balancing a number of things on our side, including the delay that that might entail; including, you know, what happens if we go down that path. You know, the benefit of suing under the notes, of course, is that he's contractually obligated to pay all of our fees.

And so we're balancing all of those things as these -- as

these defenses metastasize. But it's something that we're considering, and we reserve the right to do exactly that, as these defenses continue to get -- and it would be fraudulent transfer, it would be breach of fiduciary duty against Nancy Dondero, it would be breach of fiduciary duty against Jim Dondero. I'm sure that there are other claims, Your Honor. But if they want to -- if I'm forced to go down that path, I'm certainly going to use every tool that I have available to recover these amounts from the -- for the Debtor and their creditors. This is just an abuse of process.

How do you -- how does one enter into agreements of this type without telling your CFO, without telling your auditors, without putting it in writing? And I asked Mr. Dondero, what benefit did the Debtor get from all of this? And you know what his answer was, Your Honor? Because it's really -- it's appalling. It was going to give him heightened focus on getting the job done because of this agreement that he entered into with his sister, Nancy, acting on behalf of the Debtor, with no information, with no documents, with no notes, with no advice, with no corporate resolutions. The Debtor was going to get Mr. Dondero's heightened focus to sell MGM, Trussway, or Cornerstone for one dollar above cost.

I think the fraudulent transfer claim is probably a pretty solid one. But why do we have to do this? Why do we have to do this?

THE COURT: Well, one of the reasons I'm asking is I would not set the motion to withdraw the reference status conference on an expedited basis, which I was asked to do a few days ago in these two adversary proceedings, and I can't remember when I've set it, but now I'm even worried, if I grant this motion, is it going to be premature to have that status conference in a month or so, whenever I've set it, because if I grant this motion I'm wondering, am I going to have your motion to amend to add fraudulent transfer claims? It's -- you know, I want to give as complete a package to the District Court as I can whenever I have that motion to withdraw the reference.

All right. Ms. Drawhorn, back to you. As I said --

MS. DRAWHORN: Yes.

THE COURT: -- before inviting Mr. Morris to make his argument, I know the law is very much on your clients' favor as far as the law construing Rule 15(a). But my goodness, I'm wondering if your client needs -- your client needs to be careful what they're asking for here, after what I've just heard.

Anyway, what -- you get the last word on this.

MS. DRAWHORN: Yes. Thank you, Your Honor. My response is that Mr. Morris's argument was all on the merits of the defenses, and certainly he is free to argue on the merits, but that's not a determination for today and that's

not a determination for the motion for leave to amend. That's a determination for if he files a dispositive motion.

Like I said, we are still in the discovery phase. Mr. Morris mentioned at least three parties that will be -- likely be deposed and potentially give us the additional information that he's asking for to support this defense. He mentioned PricewaterhouseCoopers; Nancy Dondero, who he's already got scheduled in a different adversary; Frank Waterhouse.

So it's too early, as you know, to look at the merits. That's not -- that's not what's the focus of a motion for leave to amend.

As to the -- the what amendment, what agreement, what are the conditions subsequent, I believe we provided sufficient information in our reply. And if the Court would like us to update our proposed amended answer, if the Court is inclined to grant our motion, we can certainly do that. But I think the Plaintiff seems to be well aware of what the defenses are, especially after his argument today on why he thinks it's not a valid defense.

And then, on the due diligence, we did -- we did do due diligence. That's why we're seeking to amend the answer, obviously, and add these claims.

If the Court -- if the Plaintiff wants to file a motion to amend later, then we can address those amendments then.

But I think, on the Rule 15 standard, we have met our

burden and there's no substantial reason to deny the motion to amend to add these defenses.

THE COURT: All right. By the way, have your clients, have they filed proofs of claim? And I'm asking for a different reason than maybe I was asking earlier. NexPoint Real Estate Partners?

MS. DRAWHORN: They're -- NexPoint Real Estate Partners, LLC, formerly known as HCRE Partners, does have a proof of claim on file. It's unrelated to the notes. And it is subject to a contested matter that's pending -- that's a separate matter that's before the Court being addressed.

And then HCMS initially filed a proof of claim that was objected to in the Debtor's first omnibus objection and then was disallowed. There was no response to that omnibus objection, so there's no longer a proof of claim for Highland Capital Management Services.

THE COURT: Okay. Again, I'm just thinking ahead to this report and recommendation I'm eventually going to have to make on the motions to withdraw the reference. And as I alluded to, if this morphs to the point of including fraudulent transfer claims, that certainly --

MS. DRAWHORN: And Your Honor, one --

THE COURT: It's going to affect the report and recommendation. And, you know, proofs of claim affect that, too. So, --

MS. DRAWHORN: Uh-huh. Yes. And I understand that, Your Honor. And the issue, I think, with you -- we need to have this motion resolved, because it -- unless the Court is going to continue discovery or stay. You know, one of the reasons why we had initially requested the expedited hearing was because of the discovery is continued -- continuing to -- discovery deadlines are continuing to move. And obviously whatever the Court decides on this motion for leave to amend will determine what the scope of that discovery is.

Similarly, if the Debtor decides to amend, that could change the scope of discovery as well.

So we are open to continuing deadlines, and I think, you know, might end up filing a motion to continue. I haven't conferred with Mr. Morris yet. I suspect he's opposed, based on our prior conversations. But that's something that might be helpful, especially if the Court is concerned on how it will affect the motion to withdraw the reference, to -- maybe we continue some of these upcoming deadlines, and that might appease, you know, solve some of your concerns.

THE COURT: All right. Well, Rule 15(a), of course, is the governing rule here, and the case law is abundant that courts "should freely give leave when justice so requires." And the law is also abundantly clear that the rule "evinces a bias in favor of granting leave to amend." And again and again, cases say that leave should be granted unless there's

substantial reason to deny leave, and courts may consider factors such as delay or prejudice to the non-movant, bad faith or dilatory motives on the part of the movant, repeated failure to cure deficiencies, or futility of the amendment.

While the Debtor has presented arguments that there might be bad faith here on the part of the Movants and there might be futility in allowing the amendments because of various strong arguments and defenses the Debtor believes it has to this issue of agreements with regard to the notes that allegedly provide affirmative defenses, the Court believes the rule requires me to allow leave to amend the answer.

Now, a couple of things. I am going to require, though, that the amended answer be more specific than has been suggested. I am going to agree that if new affirmative defenses are made that there was this agreement to forgive when certain conditions happened, then there does need to be identification of who the human beings were that were involved in making the agreement, the date of any agreement or agreements, and disclose what documents substantiate the agreement or reflect the agreement. All right? So if that could --

MR. MORRIS: Your Honor?

THE COURT: Yes?

MR. MORRIS: John Morris. I apologize for interrupting, but just a fourth thing is what is the

agreement? I mean, what is the agreement?

THE COURT: Well, okay. That's fair enough. What is the agreement? I guess --

MR. MORRIS: And -- and --

THE COURT: -- that needs to be spelled out. I mean, I guess I was assuming that that would be spelled out in -- but maybe it's not. So we'll go ahead and add that.

As far as extension of the discovery, Ms. Drawhorn has offered that. I think it would be reasonable if the Debtor or Plaintiff wants that. Do you want an extension of discovery?

MR. MORRIS: What I really want, Your Honor, is a direction for them to serve this amended answer within 24 or 48 hours and grant leave to the Debtor to promptly file written discovery. We've got Nancy Dondero -- if it turns out -- and maybe Ms. Drawhorn can just answer the question right now. Who entered the agreement on behalf of the Debtor? Because I'm already taking Nancy Dondero's deposition on the 28th. And it seems to me, if they would just answer the question of whether Ms. Dondero is the person who did that, I could just add a notice of deposition and take the deposition on that date, too, and it would be, really, more efficient for everybody.

THE COURT: Ms. Drawhorn, who was the human being?

MS. DRAWHORN: Yes. It was -- yes, Nancy Dondero entered into the -- the subsequent agreement.

MR. MORRIS: Okay. Super.

THE COURT: All right. You said you've already --

MR. MORRIS: So, --

THE COURT: -- got a depo scheduled of her?

MS. DRAWHORN: Well, what's the date --

MR. MORRIS: I do --

MS. DRAWHORN: -- Mr. Morris?

MR. MORRIS: I believe it's the 28th. Your co-counsel can confirm, but I think it's the 28th.

And I'll just get another deposition notice for that one, and we'll figure out a time to take Mr. Sauter's deposition, too.

But I don't think that there is a need, frankly, for -- having been told by Mr. Dondero that there's no documents related to this, having the Court just ordered the Defendants to disclose the identity of any documents that relate to this agreement, I don't think we need to extend the discovery deadline at all. I can take Ms. Dondero's deposition, I can take Mr. Dondero's deposition, and I can take Mr. Sauter's deposition in due course over the next four weeks.

THE COURT: All right. Well, Ms. Drawhorn, we'll say that this amended answer needs to be filed by midnight Friday night, 11:59. That gives you a day and a half to get it done. All right. If you could please --

MS. DRAWHORN: Yes, Your Honor.

THE COURT: Please upload an order, Ms. Drawhorn, granting your motion with these specific requirements that I've orally worked in.

I think clients need to be careful what they ask for. I'm very concerned. And I know it was just argument and I'll hear evidence, but of all of the things that I guess -- well, I'm concerned about a lot of things, but do we have audited financial statements that didn't disclose these agreements with regard to --

MR. MORRIS: Yes, Your Honor.

THE COURT: I mean, that's -- I'm just -- you know, there's a lot to be concerned about on that point alone, I would think. But, all right. If there's nothing further, we are adjourned. Thank you.

THE CLERK: All rise.

(Proceedings concluded at 11:58 a.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **06/12/2021**

_____ _____

Kathy Rehling, CETD-444 Date

Certified Electronic Court Transcriber

INDEX

EXHIBIT 32

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	December 10, 2020
	9:30 a.m. Docket
Debtor.	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	**Adversary Proceeding 20-3190-sgj**
Plaintiff,	- MOTION FOR PRELIMINARY INJUNCTION
v.	- MOTION FOR TEMPORARY RESTRAINING ORDER
JAMES D. DONDERO,	
Defendant.	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX/TELEPHONIC APPEARANCES:

For the Plaintiff:	Jeffrey N. Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
For the Plaintiff:	John A. Morris PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Chicago, IL 60603 (312) 853-7539

the protocols have been followed.

As Your Honor knows, when we've had an issue under the protocols, I remember several months ago when we argued about certain distributions being made, the Committee certainly was not shy about bringing it to Your Honor's attention.

So we have been very vigilant and very diligent in holding the Debtor accountable under the protocols. And we believe that -- although, again, when we've had an issue, we've come to Your Honor. We believe that the protocols have worked as they were intended to and as they were designed, Your Honor.

So I can assure you that the Committee has been very vigilant and the Committee will continue to be very vigilant. These issues were all raised in the context of negotiating the protocols. That was before Your Honor. Mr. Dondero was involved with that. It was very difficult negotiations, Your Honor.

But this does seem like somebody now trying to renegotiate what it was that the parties agreed to and Your Honor approved early on in this case.

So, Your Honor, rest assured, the Committee has been very vigilant and will continue to be very vigilant.

THE COURT: All right. And I guess the last thing I'll say on that point is, while of course we always want transparency --

(Interruption.)

THE COURT: While we, of course, always want transparency and notice and opportunity to object, I mean, these are not your typical run-of-the-mill assets. They're not a parcel of real property or a building somewhere or inventory somewhere or intellectual property. I mean, these are -- you know, again, we have a unique business here. And I think that was very much recognized in the process of negotiating the protocols, that this is not the type of business where you do a 363 motion on 21 days' notice any time you feel like, oh, today's a great day to trade this or that in whatever fund.

Well, we will go forward on this motion, because Mr. Dondero is entitled to his day in court to make his argument, put on his evidence, and try to convince me that this is not just trying to renegotiate something Mr. Dondero agreed to 11 months ago on the eve of confirmation. But I want to make sure -- oh, we're getting --

(Echoing.)

(Clerk advises Court.)

THE COURT: Okay. You're on mute. You're on mute, Mr. Lynn.

MR. LYNN: Your Honor, may I explain briefly? This is very distressing. Mr. Morris says that it is the ordinary course of this Debtor's business to sell a subsidiary. This is not the ordinary course of the Debtor's business. There is

nothing in the protocols that says that the independent board and just the creditors on the Creditors' Committee may make decisions concerning major sales. We will present evidence to that effect when it occurs, and we believe strongly -- and I want to state, Your Honor, I didn't participate in negotiations of those protocols. I wasn't involved. And I've looked at them. There's nothing that says that this can occur without going to a hearing. And there is nothing in the protocols that defines ordinary course of business to involve this.

This motion was not filed because Mr. Dondero wanted to get in the way. It was filed because I thought it was the right thing to do because I thought that this was contrary to the way bankruptcy and Chapter 11 should work. And it was reasoned by me, with Mr. Dondero's consent. And I very, very much am upset to hear things people say that he's trying to get in the way with this. He is not. He's asking for something that is very, very, very reasonable. If they have nothing to hide, and I hope they don't and don't believe they do, but if the Debtor has nothing to hide, what is wrong with notice and a chance for hearing?

MR. POMERANTZ: Your Honor, this is Jeff Pomerantz. If I briefly may be heard.

THE COURT: Go ahead.

MR. POMERANTZ: I actually did negotiate the

Court next Wednesday, he needs to testify. And if NexPoint, through whoever their decision-maker is, is wanting to urge a position to the Court, they need a human being to testify. And I'll hear Seery and I'll hear Dondero and I'll hear whoever that person is, and that's what's going to matter, you know, most to me. Yeah, we have some legal issues, certainly, but I like to hear business people explain things, no offense to the lawyers. But it's always very helpful to hear the business people in addition to the lawyers. All right. So, Mr. Morris, you're going to upload that TRO for me.

MR. MORRIS: Yes, Your Honor.

THE COURT: Mr. Wright, you can upload your order setting your motion for hearing next Wednesday at 1:30. And I think we have our game plan for now. Anything else? All right. We're adjourned.

THE CLERK: All rise.

(Proceedings concluded at 11:33 a.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript to the best of my ability from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **12/11/2020**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

EXHIBIT 33

CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed June 17, 2021

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
	§	

ORDER REQUIRING DISCLOSURES

I. Introduction.

This Order is issued by the court *sua sponte* pursuant to Section 105 of the Bankruptcy Code and the court's inherent ability to efficiently monitor its docket and evaluate the standing of parties who ask for relief in the above-referenced case. More specifically, the Order is directed at clarifying the party-in-interest status or standing of numerous parties who are regularly filing pleadings in the above-referenced 20-month-old Chapter 11 bankruptcy case. The court has determined that there is

[1] The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

a need to: (a) fully understand whether such parties (defined below) have statutory or constitutional standing with regard to recurring matters on which they frequently file lengthy and contentious pleadings and, if so, (b) ascertain whether their interests are sufficiently aligned such that the parties might be required to file joint pleadings hence forth, rather than each file pleadings that are similar in content. The court has commented many times that certain active parties (*i.e.*, Mr. James Dondero and numerous non-debtor entities that he controls—hereinafter the "Non-Debtor Dondero-Related Entities") seem to have tenuous standing. Mr. Dondero is, of course, the Debtor's co-founder, former President, Chief Executive Officer ("CEO"), and indirect beneficial equity owner.[2] Since standing is a subject matter jurisdiction concern, the court has determined that it is in the interests of judicial economy to gain some clarity with regard to the standing of the various Non-Debtor Dondero-Related Entities. It is also in the interests of judicial economy, the interests of other parties in this case, and in the interest of reducing administrative expenses of this estate that there be consolidation of pleadings, wherever possible, of the Non-Debtor Dondero-Related Entities.

[2] In addition to being the former CEO, Mr. Dondero represents that he is a "creditor, indirect equity security holder, and party in interest" in the Debtor's bankruptcy. This court has stated on various occasions that this assertion is ostensibly true, but somewhat tenuous. Mr. Dondero filed five proofs of claim in the Debtor's bankruptcy case. Two of those proofs of claim were withdrawn with prejudice on November 23, 2020 [DE # 1460]. The other three are unliquidated, contingent claims, each of which stated that Mr. Dondero would "update his claim in the next ninety days." Ninety days has long-since passed since those proofs of claim were filed and Mr. Dondero has not updated those claims to this court's knowledge. With regard to Mr. Dondero's assertion that he is an "indirect equity security holder," the details have been represented to the court many times to be as follows (undisputed): Mr. Dondero holds no direct equity interest in the Debtor. Mr. Dondero instead owns 100% of Strand Advisors, Inc. ("Strand"), the Debtor's general partner. Strand, however, holds only 0.25% of the total limited partnership interests in the Debtor through its ownership of Class A limited partnership interests. The Class A limited partnership interests are junior in priority of distribution to the Debtor's Class B and Class C limited partnership interests. The Class A interests are also junior to all other claims filed against the Debtor. Finally, Mr. Dondero's recovery on his indirect equity interest is junior to any claims against Strand itself. Consequently, before Mr. Dondero can recover on his indirect equity interest, the Debtor's estate must be solvent, priority distributions to Class B and Class C creditors must be satisfied, and all claims against Strand must be paid.

II. Background: The Chapter 11 Case.[3]

On October 16, 2019 (the "Petition Date"), Highland filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Highland is a registered investment advisor that is in the business of buying, selling, and managing assets on behalf of its managed investment vehicles. It manages billions of dollars of assets—to be clear, the assets are spread out in numerous, separate fund vehicles. While the Debtor has continued to operate and manage its business as a debtor-in-possession, the role of Mr. Dondero *vis-à-vis* the Debtor was significantly limited early in the bankruptcy case and ultimately terminated. The Debtor's current CEO is an individual selected by the creditors named James P. Seery.

Specifically, early in the case, the Official Unsecured Creditors Committee ("UCC") and the U.S. Trustee ("UST") desired to have a Chapter 11 Trustee appointed—absent some major change in corporate governance[4]—due to conflicts of interest and the alleged self-serving, improper acts of Mr. Dondero and possibly other officers (for example, allegedly engaging, for years, in fraudulent schemes to put Highland's assets out of the reach of creditors). Under this pressure, the Debtor negotiated a term sheet and settlement with the UCC (the "January 2020 Corporate Governance Settlement"), which was executed by Mr. Dondero and approved by a court order on January 9, 2020 (the "January 2020 Corporate Governance Order").[5] The settlement and term sheet contemplated a complete overhaul of the corporate governance structure of the Debtor. Mr. Dondero resigned from his role as an officer and director of the Debtor and of its general partner. Three new independent directors (the "Independent Board") were appointed to govern the Debtor's

[3] For a more detailed factual description of some of the disputed issues in this case, see the Memorandum of Opinion and Order Granting in Part Plaintiff's Motion to Hold James Dondero in Civil Contempt of Court for Alleged Violation of TRO, entered June 7, 2021, DE # 190, in AP # 20-3190.
[4] The UST was steadfast in wanting a Trustee.
[5] *See* DE ## 281 & 339.

general partner Strand Advisors, Inc.—which, in turn, managed the Debtor. All of the new Independent Board members were selected by the UCC and are very experienced within either the industry in which the Debtor operates, restructuring, or both (Retired Bankruptcy Judge Russell Nelms, John Dubel, and James P. Seery). As noted above, one of the Independent Board members, James P. Seery ("Mr. Seery"), was ultimately appointed as the Debtor's new CEO and CRO.[6] As for Mr. Dondero, while not originally contemplated as part of the January 2020 Corporate Governance Settlement, the Debtor proposed at the hearing on the January 2020 Corporate Governance Settlement that Mr. Dondero remain on as an unpaid employee of the Debtor and also continue to serve as and retain the title of a portfolio manager for certain separate ***non-Debtor*** investment vehicles/entities whose funds are managed by the Debtor. The court approved this arrangement when the UCC ultimately did not oppose it. Mr. Dondero's authority with the Debtor was subject to oversight by the Independent Board, and Mr. Seery was given authority to oversee the day-to-day management of the Debtor, including the purchase and sale of assets held by the Debtor and its subsidiaries, as well as the purchase and sale of assets that the Debtor manages for various separate non-Debtor investment vehicles/entities. Significant to the court and the UCC was a provision in the order, at paragraph 9, stating that "Mr. Dondero shall not cause any Related Entity to terminate any agreements with the Debtor."

To be sure, this was a complex arrangement. Apparently, there were well-meaning professionals in the case that thought that having the founder and "face" behind the Highland brand still involved with the business might be value-enhancing for the Debtor and its creditors (even though Mr. Dondero was perceived as not being the type of fiduciary needed to steer the ship through bankruptcy). For sake of clarity, it should be understood that there are at least hundreds of

[6] "CRO" means Chief Restructuring Officer. *See* DE # 854, entered July 16, 2020.

entities—the lawyers have sometimes said 2,000 entities—within the Highland byzantine organizational structure (sometimes referred to as the "Highland complex"), most of which are ***not*** subsidiaries of the Debtor, nor otherwise owned by Highland. And only Highland itself is in bankruptcy. However, these entities are very much intertwined with Highland—in that they have shared services agreements, sub-advisory agreements, payroll reimbursement agreements, or perhaps, in some cases, less formal arrangements with Highland. Through these agreements Highland (***through its own employees***) has historically provided resources such as fund managers, legal and accounting services, IT support, office space, and other overhead. Many of these non-Debtor entities appear to be under the *de facto* control of Mr. Dondero—as he is the president and portfolio manager for many or most of them—although Mr. Dondero and certain of these entities stress that these entities have board members with independent decision making power and are not the mere "puppets" of Mr. Dondero. This court has never been provided a complete organizational chart that shows ownership and affiliations of all 2,000 Non-Debtor Dondero-Related Entities, but the court has, on occasion, been shown information about some of them and is aware that a great many of them were formed in non-U.S. jurisdictions, such as the Cayman Islands.

Eventually, the Debtor's new Independent Board and management concluded that it was untenable for Mr. Dondero to continue to be employed by the Debtor in any capacity. Various events occurred that led to the termination of his employment with the Debtor. For one thing, Mr. Dondero prominently opposed certain actions taken by the Debtor through its CEO and Independent Board including: (a) objecting to a significant settlement that the Debtor had reached in court-ordered mediation[7] with creditors Acis Capital Management and Josh and Jennifer Terry (the "Acis

[7] The court appointed Retired Bankruptcy Judge Allan Gropper, S.D.N.Y., and Attorney Sylvia Mayer, Houston, Texas (both with the American Arbitration Association), to be co-mediators over multiple disputes in the Bankruptcy Case, including the Acis dispute. The co-mediators, among other things, attempted to mediate disputes/issues with Mr. Dondero.

Settlement")—which settlement helped pave the way toward a consensual Chapter 11 plan, and (b) pursuing, through one of his family trusts (the Dugaboy Investment Trust), a proof of claim alleging that the Debtor (including Mr. Seery) had mismanaged one of the Debtor's subsidiaries, Highland Multi Strategy Credit Fund, L.P. ("MSCF") with respect to the sale of certain of its assets during the bankruptcy case (in May of 2020).[8] The Debtor's Independent Board and management considered these two actions to create a conflict of interest— if Mr. Dondero was going to litigate significant issues against the Debtor in court, that was his right, but he could not continue to work for the Debtor (among other things, having access to its computers and office space) while litigating these issues with the Debtor in court.

But the termination of his employment was not the end of the friction between the Debtor and Mr. Dondero. In fact, literally a week after his termination, litigation posturing and disputes began erupting between Mr. Dondero and certain Non-Debtor Dondero-Related Entities, on the one hand, and the Debtor on the other.

At the present time, 11 adversary proceedings have been filed related to this bankruptcy case involving Non-Debtor Dondero-Related Entities. Additionally, Non-Debtor Dondero-Related entities have filed 11 appeals of bankruptcy court orders. Non-Debtor Dondero-Related entities have begun filing lawsuits relating to the bankruptcy case in other *fora* that are the subject of contempt motions.

III. **The Non-Debtor Dondero-Related Entities**.

The following are the Non-Debtor Dondero-Related Entities encompassed by this Order and their known counsel[9]:

[8] *See, e.g.*, Proof of Claim No. 177 and DE # 1154.
[9] There are three other entities that the court is not including in this Order at this time, since, although they have appeared in the past, they are no longer active in the case because of either resolving issues with the Debtor or other reasons: (a) Highland CLO Funding Ltd. (previously represented by the law firm of King and Spaulding); (b) Hunter

A. James D. Dondero

Mr. Dondero has had three law firms representing him in the bankruptcy proceedings: Bonds Ellis Eppich Schafer Jones LLP; Stinson L.L.P.; and Crawford Wishnew Lang.

As earlier mentioned, Mr. Dondero has three pending proofs of claim that are unliquidated, contingent claims. Each of these claims state that Mr. Dondero would "update his claim in the next ninety days." Ninety days has long-since passed since those proofs of claim were filed and Mr. Dondero has not updated those claims to this court's knowledge. While this court is unclear what the alleged amount of Mr. Dondero's three unliquidated, contingent proofs of claim might be, the court takes judicial notice that the Debtor has filed an adversary proceeding (Adv. Proc. # 21-3003) alleging that Mr. Dondero is liable to three bankruptcy estate on three demand notes, on which the total amount due and owing is $9,004,013.07. Mr. Dondero has also been sued along with CLO Holdco, Grant Scott, Charitable DAF Holdco, Charitable DAF Fund, Highland Dallas Foundation, and the Get Good Trust for alleged fraudulent transfers in Adv. Proc. # 20-3195.

As far as equity interests in the Debtor, the Debtor is a Delaware limited partnership. The general partner is named Strand Advisors, Inc. ("Strand"). Mr. Dondero owns 100% of Strand Advisors, Inc. ("Strand"), the Debtor's general partner, but gave up control of Strand pursuant to a court-approved corporate governance agreement reached in this case in January 2020, to which Mr. Dondero agreed. As of the Petition Date, the Debtor's limited partnership interests were held: (a) 99.5% by an entity called Hunter Mountain Investment Trust; (b) 0.1866% by The Dugaboy Investment Trust (Mr. Dondero's family trust—described below), (c) 0.0627% by the retired co-founder of the Debtor, Mark Okada, personally and through family trusts, and (d) 0.25% by Strand. These limited partnership interests were in three classes (Class A, Class B, and Class C). The

Mountain Trust (previously represented by Sullivan Hazeltine Allinson and Rochelle McCullough); and (c) NexBank (previously represented by Alston & Bird).

Class A interests were held by The Dugaboy Investment Trust, Mark Okada, and Strand. The Class B and C interests were held by Hunter Mountain Investment Trust and Hunter Mountain. The significance of this is that the Class A limited partnership interests are junior in priority of distribution to the Debtor's Class B and Class C limited partnership interests. The Class A interests are also junior to all other claims filed against the Debtor. And, of course, Mr. Dondero's recovery on his equity interest in Strand is junior to any claims against Strand itself. Consequently, before Mr. Dondero can recover on his indirect equity interest, the Debtor's estate must be solvent, priority distributions to Class B and Class C creditors must be satisfied, and all claims against Strand must be paid.

B. The Dugaboy Investment Trust ("Dugaboy") and Get Good Nonexempt Trust ("Get Good")

The Dugaboy and Get Good Trusts are represented by the law firm Heller Draper & Horn.

Mr. Dondero is the beneficiary of Dugaboy and the settlor of Get Good (and family members are the beneficiaries). It has been represented in pleadings that Get Good is a trust established under the laws of the State of Texas. It has been represented in pleadings that Dugaboy is a trust established under the laws of the State of Delaware. At least as of the Petition Date, an individual named Grant Scott (a long-time friend of Mr. Dondero's, who is a patent lawyer and resides in Colorado) is the trustee of both. Mr. Dondero's sister may also be a trustee of Dugaboy.

As mentioned above, Dugaboy owns a 0.1866% of the Class A junior limited partnership interest in the Debtor.

Get Good has filed a proof of claim in this Bankruptcy Proceeding (submitted by Grant Scott). Dugaboy has filed several proofs of claim in this Bankruptcy Proceeding (all were submitted by Grant Scott). The court is not aware of the nature or amount of these claims, except the court has been apprised that: (a) one Dugaboy proof of claim alleges that Highland is obligated on a debt

owed to Dugaboy by an entity known as Highland Select, allegedly because Highland is Highland Select's general partner and might also be its alter ego; and (b) another proof of claim asserts postpetition mismanagement by the Debtor of assets of one or more Debtor subsidiaries. While the court knows nothing about the Get Good proof of claim, it does know that the Get Good Trust (along with others, including Grant Scott) has been sued for alleged fraudulent transfers in an adversary proceeding in this case (Adv. Proc. # 20-3195)—which may affect the allowability of its proof of claim.

C. *Highland Capital Management Fund Advisors, L.P. ("HCMFA") and NexPoint Advisors, L.P. ("NPA") (sometimes collectively referred to as the "Advisors")*

These entities have been represented by the K&L Gates law firm at times and currently are represented by the law firm of Munsch Hardt Kopf & Harr. The entities are registered investment advisors that previously had shared services agreements with the Debtor.

It has been represented that Mr. Dondero directly or indirectly owns and/or effectively controls each of the Advisors. He is the President of each of them.

It is the court's understanding that both of these entities withdrew their original proofs of claim. However, the Advisors filed an application for an administrative expense claim on January 24, 2021, relating to services the Advisors allege the Debtor did not perform under a shared services agreement. The Debtor has since filed an objection to the claim and the matter is set for trial on September 28, 2021. Further, the Debtor has filed an adversary proceeding (Adv. Pro. # 21-3004) alleging that HCMFA owes the Debtor an aggregate of $7,687,653.07 pursuant to two promissory notes and the Debtor has filed an adversary proceeding (Adv. Pro. # 21-3005) alleging that NPA owes the Debtor $23,071,195.03 pursuant to a promissory note.

D. *Highland Funds I and its series Highland Healthcare Opportunities Fund, Highland/iBoxx Senior Loan ETF, Highland Opportunistic Credit Fund, and Highland Merger Arbitrage Fund, Highland Funds II and its series Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Fixed Income Fund, and Highland Total Return Fund, NexPoint Capital, Inc., NexPoint Strategic Opportunities Fund, Highland Income Fund, Highland Global Allocation Fund, and NexPoint Real Estate Strategies Fund*

These entities are represented by the K&L Gates law firm. They are apparently each managed by the Advisors and these funds are specifically managed by Mr. Dondero as portfolio manager.

The court has no idea who owns these companies (assuming they should be regarded as separate companies). The court does not know which, if any of them, have filed proofs of claims.

E. *Charitable DAF Holdco, Ltd. ("DAF Holdco"), Charitable DAF Fund, LP ("DAF"), Highland Dallas Foundation, Inc., ("Highland Dallas Foundation")*

These entities are represented by the law firms of Kelly Hart Pitre and Sbaiti & Company PLCC.

It has been represented to the court that the DAF is managed by DAF Holdco, which is the managing member of the DAF. It has further been represented to the court that DAF Holdco is owned by three different purported charitable foundations: Highland Dallas Foundation, Inc., Highland Santa Barbara Foundation, Inc., and Highland Kansas City Foundation, Inc. (collectively, the "Highland Foundations"). DAF Holdco is an exempted company incorporated in the Cayman Islands. Grant Scott has apparently, until recently, served as its managing member. The DAF is an exempted company incorporated in the Cayman Islands. Highland Dallas Foundation is a Delaware nonprofit, nonstock corporation.

Mr. Dondero is the president and one of the three directors of each of the Highland Foundations. Apparently, Grant Scott was recently replaced by a former Highland employee named Mark Patrick (who is now an employee of Skyview Group, an entity created by former Highland employees). Although the Debtor is the non-discretionary investment advisor to the

DAF, the Debtor does not have the right or ability to control or direct the DAF or CLO Holdco. Instead, the DAF takes and considers investment and payment advice from the Debtor, but ultimate decisions are in the control of Mr. Patrick, presumably at Mr. Dondero's direction.

The court is not aware whether these entities have filed proofs of claim. However, they, along with Messrs. Dondero and Scott, CLO Holdco and the Get Good have been sued for fraudulent transfers in Adv. Proc. # 20-3195.

F. CLO Holdco, Ltd.

This entity was previously represented by the law firm of Kane Russell Coleman & Logan and more recently is represented by the law firm of Sbaiti & Company PLLC.

CLO Holdco is a wholly owned and controlled subsidiary of the DAF. CLO Holdco is an exempted company incorporated in the Cayman Islands. CLO Holdco has filed two proofs of claim in this Bankruptcy Proceeding. Both proofs of claim were submitted by Grant Scott in his capacity as Director of CLO Holdco.

CLO Holdco, along with Messrs. Dondero and Scott, DAF Holdco, DAF Fund, Highland Dallas Foundation, and the Get Good have been sued for fraudulent transfers in Adv. Proc. # 20-3195.

G. *NexPoint Real Estate Finance Inc., NexPoint Real Estate Capital, LLC, NexPoint Residential Trust, Inc., NexPoint Hospitality Trust, NexPoint Real Estate Partners, LLC, NexPoint Multifamily Capital Trust, Inc., VineBrook Homes, Trust, Inc., NexPoint Real Estate Advisors, L.P., NexPoint Real Estate Advisors II, L.P., NexPoint Real Estate Advisors III, L.P., NexPoint Real Estate Advisors IV, L.P., NexPoint Real Estate Advisors V, L.P., NexPoint Real Estate Advisors VI, L.P., NexPoint Real Estate Advisors VII, L.P., NexPoint Real Estate Advisors VIII, L.P., and any funds advised by any of the foregoing and any of their subsidiaries (sometimes collectively referred to as "NPRE")*

These entities are represented by the law firm of Wick Phillips Gould & Martin, LLP.

The entity known as HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC) is alleged to owe the Debtor over $11 million pursuant to five promissory notes (as asserted in Adv.

Pro. # 21-3007). The court understands this same entity has filed a proof of claim relating to its alleged interest in "SE Multifamily Holdings, LLC," which has been objected to and has not been resolved.

The court has no idea who owns or manages these companies or what exact function they play in the Highland complex of companies. The court does not know anything about the substance of the proof of claims.

H. Highland Capital Management Services, Inc.

This entity appears to be represented by both Wick Phillips Gould & Martin, LLP (which also represents NPRE) and Stinson L.L.P. (which also sometimes represents Mr. Dondero personally).

This entity earlier filed two proofs of claim that were objected to and disallowed. Also, this entity is alleged to owe the Debtor approximately $7.7 million pursuant to five different promissory notes (as asserted in Adv. Pro. # 21-3006). The court has no idea who owns or manages this company or what exact function it plays in the Highland complex of companies.

IV. Disclosure Requirement

Accordingly, in furtherance of this court's desire to be more clear about the standing of various of these entities, and to assess whether their interests may be sufficiently aligned, in some circumstances, so as to require joint pleadings (rather than have a proliferation of similar pleadings) it is hereby **ORDERED** that:

Within 21 days of the entry of this Order, the Non-Debtor Dondero-Related Entities named in this Order shall file a Notice in this case disclosing thereon: (a) who owns the entity (showing percentages);[10] (b) whether Mr. Dondero or his family trusts have either a direct or indirect

[10] With regard to any minor children who may be beneficiaries of trusts, actual names should not be used (Child 1, Child 2, *etc.* would be sufficient).

ownership interest in the entity and, if so, what percentage of ultimate ownership; (c) who are the officers, directors, managers and/or trustees of the Non-Debtor Dondero-Related Entity; and (d) whether the entity is a creditor of the Debtor (explaining in reasonable detail the amount and substance of its claims).

End of Order

EXHIBIT 34

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re: HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor	§	
JAMES DONDERO, *et al.*, Appellants,	§	
v.	§	Civil Action No. 3:21-CV-0879-K
HON. STACEY G. C. JERNIGAN, Appellee.	§	

MEMORANDUM OPINION AND ORDER

Appellants James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., The Dugaboy Investment Trust, The Get Good Trust, and NexPoint Real Estate Partners, LLC. f/k/a HCRE Partners, LLC's (collectively "Appellants") appeal the Bankruptcy Court's Order Denying [Appellants'] Motion to Recuse Pursuant to 28 U.S.C. § 455 which was entered March 23, 2021. *See generally* Am. Notice of Appeal (Doc. No. 1-1); Appellants' Br. (Doc. No. 16). Because the Court lacks jurisdiction over this appeal, the Court hereby **dismisses** this appeal.

I. Relevant Background

Appellants filed a Motion to Recuse under § 455 with the Bankruptcy Court, asking United States Bankruptcy Judge Stacey G. C. Jernigan (the "Bankruptcy Judge") to recuse herself from presiding over the bankruptcy proceeding of Debtor Highland Capital Management, L.P. In an 11-page Order Denying Motion to Recuse Pursuant to 28 U.S.C. § 455 ("Recusal Order"), the Bankruptcy Judge denied the Motion while also reserving the right to supplement or amend the ruling. *See* Am. Notice of Appeal (Doc. No. 1-1) at 5-15. The Bankruptcy Court entered the Recusal Order on March 23, 2021. *See id.*; Appellants' Br. (Doc. No. 16). On April 18, 2021, the Clerk of the Bankruptcy Court transmitted the Notice of Appeal filed by Appellants on April 6, 2021. *See generally* Doc. No. 1. It is the Recusal Order that forms the basis of this appeal. *See id.* Appellants designated the Bankruptcy Judge as "Appellee". *See id.*

Before appellate briefing began, Debtor Highland Capital Management, L.P. moved the Court for leave to intervene in this appeal. *See* Mot. to Intervene (Doc. No. 2). Debtor Highland Capital Management, L.P. argued that it is the real party-in-interest, not the Bankruptcy Judge. Mot. to Intervene at 3. After the Motion to Intervene was fully briefed and ripe, the Court granted the Motion and allowed Debtor Highland Capital Management, L.P. ("Debtor/Intervenor") to file a responsive brief as accorded to an appellee under the bankruptcy rules. *See generally* Order (Doc. No. 10).

Appellants then filed their Appellants' Brief identifying and arguing two issues on appeal: (1) whether the Bankruptcy Court abused its discretion in denying Appellants' Motion to Recuse Pursuant to 28 U.S.C. § 455 as untimely; and (2) whether the Bankruptcy Court abused its discretion in denying Appellants' Motion to Recuse Pursuant to 28 U.S.C. § 455 on the merits. Appellants' Br. at 1. Intervenor/Debtor filed an Appellee's Brief in response (Doc. No. 20), and Appellants filed their Reply Brief (Doc. No. 23). The Bankruptcy Record on Appeal does not reflect that a final judgment has been entered by the Bankruptcy Court in this matter.

Upon an initial review of the appellate briefing, the Court *sua sponte* questioned its jurisdiction over this appeal. *See FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 230-31 (1990); *see also Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999) ("[S]ubject-matter delineations must be policed by the courts on their own initiative even at the highest level."). The Court issued an Order (Doc. No. 28) directing the parties to file briefs, respectively, addressing this Court's jurisdiction over an appeal of the Bankruptcy Judge's order denying a motion to recuse when final judgment has not yet been entered. The parties timely filed their respective jurisdictional briefs, and the Court has carefully considered the arguments, the applicable and binding law, and relevant portions of the record. The Court turns now to this threshold jurisdictional issue.

II. Applicable Law

Section 455 of Chapter 28 of the United States Code provides, in relevant part, that:

> (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
> (b) He shall also disqualify himself in the following circumstances:
> (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings.

28 U.S.C. § 455(a) & (b)(1). Bankruptcy Rule 5004(a) provides that "A bankruptcy judge shall be governed by 28 U.S.C. § 455, and disqualified from presiding over the proceeding or contested matter in which the disqualifying circumstances arises or, if appropriate, shall be disqualified from presiding over the case." FED. R. BANKR. P. 5004(a).

District courts have jurisdiction over appeals from the following entered by a bankruptcy judge:

> (1) from final judgments, orders, and decrees;
> (2) from interlocutory orders and decrees under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and
> (3) with leave of the court , from other interlocutory orders and decrees.

28 U.S.C. § 158(a).

III. Analysis

A. Recusal Order is an Interlocutory Order and Not Immediately Appealable as a Matter of Right

It is well-established law in the Fifth Circuit that a court's order denying a recusal motion is not a final order, is not an appealable interlocutory order, and is not an appealable collateral order, therefore it is reviewable on appeal only from final judgment. *Willis v. Kroger*, 263 F.3d 163, 163 (5th Cir. 2001); *United States v. Henthorn*, 68 F.3d 465, 465 (5th Cir. 1995); *Chitimacha Tribe of La. v. Harry L. Laws Co., Inc.*, 690 F.2d 1157, 1164 n.3 (5th Cir. 1982); *In re Corrugated Container Antitrust Litig.*, 614 F.2d 958, 960 (5th Cir. 1980); *Martin v. Driskell*, 2021 WL 4784756, at *1 (5th Cir. July 12, 2021); *In re Gordon*, 2019 WL 11816606, at *1 (5th Cir. Apr. 10, 2019); *Stancu v. Hyatt Corp./Hyatt Regency Dallas*, Civ. Action No. 3:18-CV-1737-E-BN, 2020 WL 853859, at *2 (N.D. Tex. Jan. 30, 2020), *adopted by* 2020 WL 833645 (Feb. 20, 2020)(Brown, J.); *Prather v. Dudley*, Civ. Action No. 9:06cv100, 2006 WL 3317124, at *2 (E.D. Tex. Oct. 18, 2006); *Hardy v. Fed. Express Corp.*, No. Civ.A 97-1620, 1998 WL 104686, at *1 (E.D. La. Mar. 6, 1998). Moreover, both the Fifth Circuit and district courts in this Circuit have applied this very clear, decades-old law in appeals taken from a bankruptcy court's order denying a motion to recuse. *In re Dorsey*, 489 F. App'x 763, 764 (5th Cir. 2012); *In re Schweitzer*, Civ. Action No. 07-4036, 2007 WL

2965045, at *1 (E.D. La. Oct. 9, 2007); *In re Moerbe*, No. 03-57260-LMC/04-5043-LMC/SA-04-CA-801-FB, 2005 WL 3337634, at *3 (W.D. Tex. Sept. 1, 2005).

In this case, the Bankruptcy Record on Appeal does not establish that a final judgment has been entered. The law in the Fifth Circuit specifies that a court's order on a motion to disqualify the judge "is not an appealable final order" and "a party 'must await final judgment to appeal [a] judge's refusal to recuse.'" *In re Dorsey*, 489 F. App'x at 764 (holding court was without jurisdiction to review bankruptcy court's decision on motion to recuse because, although final judgment had been entered, the appeal of it had not yet been resolved). Appellants attempt to get around this law by arguing that the courts have considered the "finality" of an order on a motion to recuse only under 28 U.S.C. § 1291 (which applies to jurisdiction of courts of appeals over appeals from final orders of district courts) and not § 158(a) (which applies to jurisdiction of district court over appeals from bankruptcy court orders). Appellants contend this is crucial because the bankruptcy appellate statute, § 158(a), applies here and that statute contemplates the more liberal and flexible "finality" standard accorded to bankruptcy courts, rather than the finality standard under § 1291 pertaining to district court orders. Resp. Br. (Doc. No. 31) at 2-7.

The Court rejects Appellants' suggestion that the Court should or even can construe this Recusal Order under a different "finality" standard mere because the

Bankruptcy Court entered it. There is nothing in the Court's own research, nor anything provided by Appellants, to suggest that the Court should ignore this binding precedent and apply a more liberal and flexible "finality" standard to this appeal of the Recusal Order merely because it is an order of the Bankruptcy Court. Indeed, courts in this Circuit have not hesitated in applying this well-settled law to an appeal of a bankruptcy court order on a motion to recuse. *See, e.g., In re Schweitzer*, 2007 WL 2965045, at *1 (court found jurisdiction lacking over appeal from bankruptcy court's order denying motion to recuse because "the law is quite clear that an order denying a motion to disqualify a judge is an interlocutory order from which no appeal lies prior to final judgment in the case."); *In re Moerbe*, 2005 WL 3337634, at *3 ("Because an order denying a motion to recuse or disqualify a judge is interlocutory, not final, and is not immediately appealable, it would seem to follow that the [the bankruptcy court's] order in this case granting recusal but denying its permanency is likewise interlocutory."). The Court finds no justification for straying from the well-settled law in the Fifth Circuit and finds that the Bankruptcy Court's Recusal Order is not a final appealable order.

The Court also finds that the Recusal Order is not subject to the collateral order doctrine and it is not an interlocutory order that is not immediately appealable. Appellants ask the Court to treat the Recusal Order as subject to the collateral order

doctrine. The Court rejects this request as there is no legal basis for doing so. Appellants again ignore very clear Fifth Circuit law that a court order denying a recusal motion is not an appealable collateral order. *Willis*, 263 F.3d at 163 (citing *Nobby Lobby*, 970 F.2d at 85-86 & n.3); *Henthorn*, 68 F.3d at 465; *Chitimacha Tribe of La.*, 690 F.2d at 1164 n.3; *In re Corrugated Container Antitrust Litig.*, 614 F.2d at 960; *In re Dorsey*, 489 F. App'x at 764; *Martin*, 2021 WL 4784756, at *1; *In re Gordon*, 2019 WL 11816606, at *1. There is no justification to stray from this well-settled law. Moreover, the Recusal Order is not an appealable interlocutory order under § 1292(a). *Nobby Lobby*, 970 F.2d at 85-86 & n.3; *In re Dorsey*, 489 F. App'x at 764.

For these reasons, the Court finds, as it must, that the Recusal Order is an interlocutory order from which no appeal lies prior to the Bankruptcy Court entering a final judgment. *See Willis*, 263 F.3d at 163; *Nobby Lobby*, 970 F.2d at 85-86 & n.3; *In re Corrugated Container Antitrust Litig.*, 614 F.2d at 960. Therefore, the Court lacks jurisdiction over this appeal.

B. Leave to Bring an Interlocutory Appeal

Appellants' last hope for their appeal is securing leave of this Court to bring an interlocutory appeal of the Recusal Order. 28 U.S.C. § 158(a)(3) (district courts may hear appeals "with leave of the court, from other interlocutory orders" of the bankruptcy court). Appellants were required to file a motion for leave to appeal

contemporaneously with their notice of appeal. FED. R. BANKR. P. 8004(a). The motion for leave to appeal must also include certain contents. *Id.* 8004(b). Despite these unambiguous requirements of the Bankruptcy Rules, Appellants did not comply with them. Their failure, however, does not foreclose the appeal entirely because Bankruptcy Rule 8004(d) permits the Court to "treat the notice of appeal as a motion for leave and either grant it or deny it." FED. R. BANKR. P. 8004(c). In their jurisdictional brief, Appellants ask the Court to treat their Notice of Appeal as a motion for leave to appeal should the Court find the Recusal Order is an interlocutory order. Appellants' Resp. (Doc. No. 29) at 8. The Court turns now to this analysis.

Section 158(a)(3) does not articulate the standard a district court must use in deciding whether to grant leave in its discretion, but "[c]ourts in the Fifth Circuit . . . have applied 28 U.S.C. § 1292(b), the standard governing interlocutory appeals generally." *In re Hallwood Energy, L.P.*, Civ. Action No. 3:12-CV-1902-G, 2013 WL 524418, at *2 (N.D. Tex. Feb. 11, 2013)(Fish, SJ) (citing *In re Ichinose*, 946 F.2d 1169, 1177 (5th Cir. 1991); *Panda Energy Int'l, Inc. v. Factory Mut. Ins.*, 2011 WL 610016, at *3 (N.D. Tex. Feb. 14, 2011)(Kinkeade, J.)); *accord Rivas v. Weisbart*, 2019 WL 5579726, at *2 (E.D. Tex. Oct. 28, 2019); *Celadon Trucking Servs., Inc. v. Moser*, 2019 WL 4226854, at *2 (E.D. Tex. Sept. 4, 2019). There are three elements of the § 1292(b) standard: "(1) a controlling issue of law must be involved; (2) the question

must be one where there is substantial ground for difference of opinion; and (3) an immediate appeal must materially advance the ultimate termination of the litigation." *In re Ichinose*, 946 F.2d at 1177. An appeal of an interlocutory order is appropriate only where all three elements are satisfied. *See In re Genter*, Civ. Action No. 3:19-CV-1951-E, 2020 WL 3129637, at *2 (N.D. Tex. June 12, 2020)(Brown, J.) (citing *Arparicio v. Swan Lake*, 643 F.2d 1109, 1110 n.2 (5th Cir. 1981)). "The Fifth Circuit disfavors interlocutory appeals and leave to appeal is sparingly granted." *Id.* (internal citations omitted); *In re Hallwood Energy*, 2013 WL 524418, at *2 ("[I]nterlocutory appeals are 'sparingly granted' and reserved for 'exceptional' cases.") (internal citations omitted). The decision whether to grant an interlocutory appeal is firmly within the district court's discretion. *Panda Energy Int'l*, 2011 WL 610016, at *3.

In this case, there is no controlling question of law with substantial grounds for disagreement for which resolution would materially advance the end of the bankruptcy litigation. It is well-settled that a recusal motion under § 455 is left to the sound discretion of the judge. *Chitimacha Tribe of La. v. Harry L. Laws Co.*, 690 F.2d 1157, 1166 (5th Cir. 1982); *see In re Pendergraft*, 745 F. App'x 517, 520 (5th Cir. 2018) (citing *Trevino v. Johnson*, 168 F.3d 173, 178 (5th Cir. 1999)). "[C]ontrolling issue of law is one that has 'the potential for substantially accelerating the disposition of the litigation' and does not concern 'matters that are entrusted to the discretion of the bankruptcy

court.'" *In re Moerbe*, 2005 WL 3337634, at *4 (W.D. Tex. Sept. 1, 2005) (quoting *In re Aquatic Dev. Group, Inc.*, 196 B.R. 666, 669 (S.D.N.Y. 1996)). The Recusal Order was an exercise of the Bankruptcy Judge's discretion, so there is no controlling issue of law presented. *Cf. In re Tullius*, 2011 WL 5006673, at *3 (W.D. Tex. Oct. 20, 2011). Appellants also cannot satisfy the second factor because the Court cannot find there exists substantial ground for difference of opinion as to the Recusal Motion.

> [C]ourts have found substantial ground for difference of opinion where a trial court rules in a manner which appears contrary to the rulings of all Courts of Appeals which have reached the issue, if the circuits are in dispute on the question and the Court of Appeals of the circuit has not yet spoken on the point, if complicated questions arise under foreign law, or if novel and difficult questions of first impression are presented.

Ryan v. Flowserve Corp., 444 F.Supp.2d 718, 723-24 (N.D. Tex. 2006)(Boyle, J.) (internal citation omitted). The Recusal Order does not fall within any of those categories. Simply because Appellants believe the Bankruptcy Court ruled incorrectly does not demonstrate substantial ground for disagreement. *Id.* at 724. Finally, the third element eludes Appellants as well. An interlocutory appeal of the Recusal Order will in no way materially advance the ultimate end to this bankruptcy matter.

The Fifth Circuit strongly disfavors interlocutory appeals and, accordingly, they are rarely granted and reserved for "exceptional cases". *See, e.g., In re Genter*, 2020 WL 3129637, at *2. Appellants failed to satisfy any of the three § 1292(b) criteria. *Id.*

Therefore, in its discretion, the Court **denies** Appellants leave to take an interlocutory appeal of the Bankruptcy Court's Recusal Order.

Finally, the Court turns to the remaining arguments Appellants assert. First, the Court declines to *sua sponte* withdraw the reference of Appellants' motion for the bankruptcy judge to recuse herself. The case Appellants cite in support of this suggestion is inapposite here. In the unpublished Fifth Circuit opinion, *Maddox v. Cockrell*, 2003 U.S. App. LEXIS 28958 (5th Cir. 2003), the appellant sought leave to appeal the dismissal of his 28 U.S.C. § 2254 petition. *See generally Maddox v. Cockrell*, 2003 U.S. App. LEXIS 28958. The magistrate judge recommended dismissal the § 2254 petition and the district judge adopted the recommendation and dismissed the petition. *See id.* at *1-2. The Fifth Circuit did not address the merits of the dismissal, but, instead, *sua sponte* vacated the district court's final judgment and remanded with instructions to assign the case to a different district judge. *Id.* at *2. The Fifth Circuit's reasoning—the district judge was the spouse of the magistrate judge and the *pro se* prisoner likely did not know nor could he have reasonably known this. *Id.* Unlike the unusual and exceptional facts in *Maddox*, the Court does not find this appeal to justify *sua sponte* withdrawing the reference of and ruling on Appellants' motion to recuse.

The Court also finds no justification for treating Appellants' notice of appeal as a petition for writ of mandamus, which Appellants also request. A question of recusal

is reviewable on a petition for writ of mandamus. *United States v. Gregory*, 656 F.2d 1132, 1136 (5th Cir. 1981); *In re Placid Oil Co.*, 802 F.2d 783, 786 (5th Cir. 1986); *In re Cameron Int'l Corp.*, 393 F. App'x 133, 134-35 (5th Cir. 2010). "However, the writ will not lie in the absence of exceptional circumstances, and the party seeking the writ has the burden of proving a clear and indisputable right to it." *In re Placid Oil Co.*, 802 F.2d at 786 (citing *Gregory*, 656 F.2d at 1136); *accord In re Cameron Int'l Corp.*, 393 F. App'x at 134-35. Appellants fail to make the required showing. The Court refuses to construe Appellants' appeal as a petition for writ of mandamus.

C. Conclusion

The well-established precedent in the Fifth Circuit is that no jurisdiction lies over an appeal of a motion to recuse until final judgment has been entered. Appellants make arguments about potential inefficiency and wasted resources if they must wait to appeal the Recusal Order until the final judgment has been entered. But these arguments are not novel. The Court is certain those same arguments have been advanced in other courts considering this same issue and those courts have rejected them, as this Court does here. Appellants would have this Court carve out an exception to the well-settled law for them without any justifiable basis other than because they think the Bankruptcy Judge was wrong. Appellants must await final judgment, or other

final resolution, of their bankruptcy proceeding in order to appeal the Recusal Order. This Court has no jurisdiction to hear this appeal.

IV. Conclusion

The Recusal Order is not a final, appealable order, is not subject to the collateral order doctrine, and is not an appealable interlocutory order under § 1292(a) and the Court is **without jurisdiction** over this appeal of the Bankruptcy Court's Recusal Order. The Court further **denies** Appellants leave to appeal the Recusal Order under § 1292(b), **denies** Appellants' request to withdraw the reference of their motion to recuse, and **denies** Appellants' request to construe their appeal as a petition for writ of mandamus. Accordingly, the Court **dismisses** this appeal for lack of jurisdiction.

SO ORDERED.

Signed February 9th, 2022.

Ed Kinkeade

ED KINKEADE
UNITED STATES DISTRICT JUDGE

EXHIBIT 38

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	**Case No. 19-34054-sgj-11** Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	Dallas, Texas Thursday, January 14, 2021 9:30 a.m. Docket - MOTION TO PREPAY LOAN [1590] - MOTION TO COMPROMISE CONTROVERSY [1625] - MOTION TO ALLOW CLAIMS OF HARBOURVEST [1207]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

For the Debtor:	Jeffrey Nathan Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
For the Debtor:	John A. Morris Gregory V. Demo PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Street Chicago, IL 60603 (312) 853-7539
For CLO Holdco, Ltd.:	John J. Kane KANE RUSSELL COLEMAN LOGAN, P.C. 901 Main Street, Suite 5200 Dallas, TX 75202 (214) 777-4261

purchase or sale of a security. And, again, I would ask the Court to listen carefully to this because that's what it appears to be and that's what the evidence is going to show to the Court.

THE COURT: All right. Mr. Draper, let me clarify something I'm not sure if I heard you say or not. Were you saying that the Court still needs to drill down on the issue of whether the Debtor can acquire HarbourVest's interest in HCLOF?

MR. DRAPER: No.

THE COURT: Okay. I was confused whether you were saying I needed to take an independent look at that, now that the objection has been withdrawn of Holdco. You are not pressing that issue?

MR. DRAPER: No, I am not. Basically, I think it's the fairness of the settlement. I think the transferability of the interest is separate and apart from the fairness of the settlement itself. I think the fairness -- the transferability was a contractual issue between two parties that the Court does not have to drill down on.

THE COURT: All right. I have another question for you. I want to clarify your client's standing. Tell me -- I'm looking through a chart I printed out a while back. I guess Dugaboy Investment Trust filed a couple of proofs of claim; is that right?

MR. DRAPER: Yes.

THE COURT: Okay. What --

MR. DRAPER: And objections are pending.

THE COURT: Pardon?

MR. DRAPER: Objections to those claims are pending before the Court, Your Honor, --

THE COURT: Okay.

MR. DRAPER: -- and have not been litigated.

THE COURT: And what about Get Good Trust?

MR. DRAPER: Get Good Trust has a proof of claim also that objections are pending to. Pending.

THE COURT: Okay. I don't want to get too sidetracked here, but I know standing was -- was mentioned as a legal argument today. What is the basis for those proofs of claim?

MR. DRAPER: The first one is, with respect to the proof of claim for Dugaboy, there is an investment that Dugaboy made that was then funneled, we believe, up to the Debtor. And the -- the loan that exists, we believe is a Debtor loan, as opposed to a loan to the entity that we made the loans to.

And, again, it's a matter that the Court is going to hear. The claim may or may not be allowed. It has not been disallowed yet.

The second part to the Dugaboy ownership is we own an

interest in the Debtor. And so we are, in fact, a party in interest.

THE COURT: Okay.

MR. DRAPER: It may be a small interest, but it is an interest.

THE COURT: It has a limited partnership interest in the Debtor?

MR. DRAPER: Yes.

THE COURT: Is that correct?

MR. DRAPER: Yes.

THE COURT: Okay. Well, I'll move forward. Thank you.

Does that cover -- any other opening statements? I think that covered everyone who was -- who filed some sort of pleading today. No.

MR. WILSON: Your Honor, John Wilson on behalf of --

THE COURT: I'm sorry. I'm sorry.

MR. WILSON: -- Mr. Dondero.

THE COURT: I missed Mr. Dondero's counsel. I knew we had visited at some point this morning. I just got confused there. Go ahead, Mr. Wilson.

MR. WILSON: No problem, Your Honor. I was just going to say that we will reserve our comments until after the conclusion of the testimony.

THE COURT: All right. Very well.

MR. BONDS: Thank you, Your Honor.

(Proceedings concluded at 2:04 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **01/16/2021**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

EXHIBIT 39

UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF TEXAS

BEFORE THE HONORABLE STACEY G. JERNIGAN, JUDGE

In Re:	Case No. 19-34054-sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	
Debtor.	
OFFICIAL COMMITTEE OF UNSECURED CREDITORS,	Adv. Proc. No. 20-03195-sgj
Plaintiff,	PLAINTIFF'S MOTION for CONTINUANCE
v.	
CLO HOLDCO, LTD., et al.,	
Defendants.	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Adv. Proc. No. 21-03003-sgj
Plaintiff,	
v.	DEFENDANT DONDERO'S MOTION to COMPEL DISCOVERY, the TESTIMONY of JAMES P. SEERY, JR.
JAMES DONDERO,	
Defendant.	May 20, 2021
	Dallas, Texas (Via WebEx)

Appearances in 21-03003:

For Plaintiff Highland Capital Management,	John A. Morris Pachulski Stang Ziehl & Jones LLP 10100 Santa Monica Boulevard, 13th Floor Los Angeles, California 90067
For Defendant-Movant James Dondero:	Michael P. Aigen Stinson, L.L.P. 3102 Oak Lawn Avenue, Suite 777 Dallas, Texas 75219
	Bryan C. Assink Bonds Ellis Eppich Schafer Jones LLP 420 Throckmorton Street, Suite 1000 Forth Worth, Texas 76102

Appearances continued on next page.

it just maybe fell through the cracks, and I apologize, Your Honor.

THE COURT: All right.

MR. ASSINK: You know, we — Your Honor, —

THE COURT: Well, I'm going to say a couple of things. You know this could have been raised Tuesday, when we were here on the adversary proceeding, in which the preliminary injunction was issued, okay, it would have been — it would have been wise, it would have been very wise to raise the issue.

Second, it screams irony, if nothing else, that at a time when I have under advisement a motion to hold Mr. Dondero in contempt of Court that there would be a trip-up, the second-recent trip-up, by the way, where he didn't appear at a hearing. There was a time a few weeks ago, two or three weeks ago, can't remember what hearing it was then, but he wasn't here.

Okay. The —

MR. ASSINK: Well, Your Honor, I just want to say —

THE COURT: — the third thing I'm going to say — the third thing I'm going to say is I guess I'll issue an order in the main case now, you know, a one- or two-sentence order in the main case saying repeating the sentence that was in the preliminary injunction, that he's going to show up at every hearing. I never said only at substantive hearings. The only thing I hesitated on at all, because I've done this in other

cases, is sometimes I'll say any hearing at which, you know, the person is taking a position, okay, an opposition, an objection, you know, even if you file a pleading taking a neutral stand, if he's going to file a pleading that requires the Court and all the lawyers' attention to some extent, he's going to need to be in court. So that's something I thought about doing, but then I was reminded, that I said, no, he's just going to be at all hearings in the future.

And procedural, substantive, I never made that distinction and I never would because — because it's taking up time, it's taking up time of the Court, lawyers, parties. And if he is going to use the offices of this Court or, you know, take up the time of any lawyers, then he needs to be a part of it, okay?

MR. ASSINK: Your Honor, yes, I —

THE COURT: So I thought I made that very clear the last time he didn't show up, but I think —

MR. ASSINK: Your Honor, I apologize. You know that's certainly not our intention here. We've been rushing around. I think this is more — this is more on — on me and just the fast pace with everything. We would intend that he would be here at all hearings. We're not trying to make any exception. We're not trying to say that the preliminary injunction got rid of his obligation to be before, Your Honor. You know, we weren't clear exactly what the directive was for these kinds of hearings, or

based in. And, again, no one would have better information about his own compensation than Mr. Dondero himself.

I mean I want to stress that this comes against a backdrop of — well, it seems like some antagonism, to say the least, on the part of Mr. Dondero where Mr. Seery's concerned. It seems like it's always a fight with Mr. Seery. And you say, well, we didn't handpick him as the 30(b)(6) witness, but, you know, the motion to compel names him by name. It just — it feels like another antagonistic move.

You've got him for a deposition next Monday on 13 or so different topics. I think it is appropriate to draw the line on these six or so topics that again just don't seem relevant or proportional to the needs of the case.

All right. So, Mr. Morris, would you please upload just a simple order reflecting the Court's ruling?

MR. MORRIS: I would be happy to, Your Honor.

THE COURT: Okay. Actually I'm going to ask Mr. Aigen to do it. I'm sorry. I need to be thinking about attorney's fees and who should bear the costs of what.

So, Mr. Aigen, would you please electronically submit an order?

MR. AIGEN: Yes.

THE COURT: All right. Thank you.

All right. Well, if there's nothing else on this particular adversary, let me just double check. Any

State of California)
) SS.
County of San Joaquin)

I, Susan Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Northern District of Texas, Office of the Clerk, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am not a party to nor in any way interested in the outcome of this matter.

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Susan Palmer
Palmer Reporting Services

Dated May 22, 2021

EXHIBIT 40

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	Monday, May 10, 2021
	1:30 p.m. Docket
Debtor.	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	**Adversary Proceeding 20-3190-sgj**
Plaintiff,	- TRIAL DOCKET CALL
	- DEFENDANT'S EMERGENCY MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF DEFENDANT'S PETITION FOR WRIT OF MANDAMUS [154]
v.	
JAMES D. DONDERO,	
Defendant.	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

For the Plaintiff: John A. Morris
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

For the Plaintiff: Jeffrey Nathan Pomerantz
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

Can everyone hear me okay? I don't know if we're having connectivity issues. Can everyone hear me?

MR. MORRIS: Yes, Your Honor.

THE COURT: Can you hear me, Mr. Wilson?

MR. MORRIS: Yes, Your Honor.

MR. WILSON: Yes, Your Honor.

THE COURT: Okay. I have been pondering something the past few days. And I haven't figured out how I want to address it, but maybe Mr. Dondero's counsel and counsel from some of the Dondero-controlled entities, maybe they can listen to what I'm about to say and figure out a solution.

As you all know, there are so many law firms, so many lawyers involved now that are basically singing the same tune at a lot of these hearings as far as objections, me too, me too, me too. And so just quickly eyeballing what we have, we obviously have Mr. Dondero represented by Bonds Ellis. There is another firm that represents Mr. Dondero that filed a motion asking that I recuse myself. I can't remember the name of that firm, but I think they appealed my denial of that motion. So, I can't remember who that was. Then we have the various affiliates. We have -- well, I'll just start chronologically. Highland CLO Funding, Ltd. has historically been represented by King & Spalding. I don't know if that's -- I know there were some changes there with the ownership of that entity, so maybe they're gone. But then we have NexPoint

Advisors and Highland Capital Management Fund Advisors. We call them the Advisors and then the Funds. Originally, they were all represented by K&L Gates, but now they've divvied it up and Munsch Hardt is representing, I guess, the Advisors, and the Funds are represented by K&L Gates. CLO Holdco, Ltd., it was Kane Russell Coleman & Logan representing them, but I now think I'm seeing Kane Russell is representing Grant Scott and -- individually. I'm not sure if Kane Russell is still representing CLO Holdco. We have Dugaboy and Get Good Trusts represented by Doug Draper, Heller Draper. We have now Louis Phillips representing the Charitable DAFs, Highland Dallas Foundation. We have NexPoint Real Estate Partners represented by Wick Phillips, although there's the motion to disqualify them. And then I guess I'll just throw in we've had Baker & McKenzie and Ross & Smith representing certain groups of employees, but now I guess those proofs of claim have been bought by Dondero entities and so I'm not sure who's representing who there.

I'm not even sure I got everyone just now, but here's what I'm getting at. You talk about judicial efficiency and judicial economy and economy of the partners. We can't go on efficiently with 12 law firms or whatever I just named filing the very same type of motion or objection. You know, I almost -- if we were in different circumstances, I'd say we need to have an ad hoc committee of these Dondero-controlled

affiliates, something like that.

But I've been thinking about this for a few days because I see, like in one adversary, I think we now have three motions to withdraw the reference. And I haven't studied them all, but I'm pretty sure they're going to tell me the exact same thing. And again, I'm just doing some predictions that the UBS settlement, I wouldn't be surprised if I get eight or ten or twelve objections that say the very same thing.

We're going to have to work something out. Okay? This is not efficient. It's not useful. I would think a person such as Mr. Dondero would want to rein in legal fees, but maybe not.

Do you all have any ideas, Mr. Taylor, Mr. Wilson? How can we rein this in? There's got to be a better way --

MR. TAYLOR: Your Honor?

THE COURT: -- than twelve different law firms filing almost identical pleadings.

MR. TAYLOR: Your Honor, I understand what you're saying, on the one hand. On the other hand, each of these entities do have -- are separate corporations. They have different duties to various stakeholders, and they are controlled by different stakeholders. And that is one of the things that has been a consistent, at least from what I understand from my limited understanding and length of time in the case, that that is one thing that is very important to Mr.

Dondero and those related entities, is that those duties do run to different parties. So each party has to preserve its individual rights.

Sure. Could it be more efficient? Of course. But Mr. Dondero has a different set of duties than do the Advisor, than do the Funds, than do the Trusts that are controlled by a separate trustee. And while of course there's some interrelated cooperation amongst them, amongst the joint defense agreement, it is very important that they maintain their separate corporate identities and act independently from each other, because they truly do have to act independently from each other in many different circumstances. They don't want to lose sight of that.

So that is my initial explanation. Of course, I can talk with my client about it further, about seeing what can be done, because he does indeed want to make it more efficient. Has been hammering on me and my firm every month to try to do so, and I'm sure he has with the other professionals.

But we do hear Your Honor, but we do want to make sure that that -- those different separate corporate identities of these entities is both recognized and laid out in this case. It is very important to us and just integral to a lot of the things that we've done in this case.

THE COURT: You know what would help me understand that better? Is if in every case I had this entity is owned

by, you know, 25 percent by this, this. If I knew the owners, if I knew the equitable owners. But I don't. That's just all kind of glossed over. And so that's how perceptions get created that Dondero, Dondero, Dondero, Dondero. You know what I'm saying?

MR. DONDERO: Your Honor?

THE COURT: And I don't know if you want to share that information or not, but that's why I can't just accept a generalization that, oh, we have very different stakeholders behind --

MR. TAYLOR: Your Honor? Wait, hold on a second. Your Honor, --

THE COURT: -- this entity versus this one versus this one.

MR. TAYLOR: Your Honor, if you would allow my client, he would like to very briefly address the Court on those points, if he may.

THE COURT: Okay.

MR. DONDERO: Your Honor, just a brief history from my perspective, okay? We filed with $450 million of assets and $110 million of estimated, as presented by the independent board and Pachulski to the Court, trying to do a quick settlement the first three or four months into bankruptcy. The claims, the awards, the Class 8, the Class 9 awards, the people who didn't even have standing, have all of a sudden

ballooned to $300-some-odd million. And the assets in the estate, which we haven't had an examiner go through all these no-process asset sales at a loss, when I would have bought them for more, has driven the estate value down to less than $250 million.

We made an offer to try and settle this thing a few months ago at 20 percent more than the estimated value in the recoveries. But Seery and the UCC are emboldened because they feel in this Court there's going to be no respect of third-party investors, no respect of other Dondero entities, and they've been told that they can get more than a hundred cent recovery by going after me and all my other entities going back ten or twelve years.

So there's no chance that this case ever settles. And what you're going to see is there's a half a dozen or more --

MR. POMERANTZ: Your Honor, I have to -- I have to --

MR. DONDERO: -- there's a half a dozen more law firms coming --

THE COURT: Just a moment.

MR. DONDERO: -- and there's a half a dozen -- there are a half a dozen more --

MR. POMERANTZ: Your Honor, this --

THE COURT: Mr. Morris?

MR. POMERANTZ: This is Jeff Pomerantz.

THE COURT: Mr. Morris?

MR. POMERANTZ: This is Jeff Pomerantz, Your Honor.

THE COURT: Oh, Mr. Pomerantz?

MR. POMERANTZ: This is Jeff Pomerantz, Your Honor.

THE COURT: Uh-huh.

MR. POMERANTZ: You know, I think what Mr. Dondero is doing is totally inappropriate. We're not here to relitigate the history of the case. We're not here to relitigate or determine why a settlement hasn't been reached. Your Honor raised some important questions, (garbled) gave an answer, you pushed him, but what Mr. Dondero is doing is just inappropriate, and we shouldn't -- don't think he should be doing this in this manner.

If he wants to at some point be put on to testify, he could be cross-examined. But he's testifying about things that actually just happen not to be true and it's totally inappropriate for this context.

THE COURT: Okay. Well, I understand --

MR. DONDERO: But Your Honor, there's going to a half dozen --

THE COURT: -- that -- I understand, you know, Mr. Pomerantz is concerned because I asked a specific question aimed at how do we rein in all the lawyers, and the answer was, well, they all are separate entities with separate interests and separate stakeholders. And my question was, well, could I maybe see a list, a breakdown on all of these

entities? Because, you know, in so many cases, --

MR. DONDERO: But Your Honor, --

THE COURT: -- in almost every case I have, I get a big giant what I call spaghetti chart at the beginning of the case where I get a breakdown of debtor affiliates and who owns what. And this hasn't been clear to me with all of these affiliates.

But I do very much have the impression, Mr. Dondero, that all roads lead back to you. So I let you speak to this, and we've kind of gone down a different trail. And I want you to know, I know --

MR. DONDERO: Right.

THE COURT: I know where you stand on this because you have told me before. You have huge concern that Highland had *x* hundred million dollars of assets at the beginning of the case and now it's a lot lower. I know you have concerns with liquidation at what you think were very inappropriate times. I know you have all kinds of beefs, beefs about the settlement with Acis, and probably UBS and the Redeemer Committee. I understand that. But what I'm talking about right now is going forward. Going forward, how do we rein this in where we don't --

MR. DONDERO: But going forward, there's going to be more lawyers. There's going to be more defense. Because the Debtor is just going to keep trying to broaden, because they

feel empowered and enabled to go after anything related to Highland, me, et cetera. But there's probably half a dozen more attorneys coming into this case. I don't know what to tell you. It's a circus.

THE COURT: Okay. Well, I'm going to let you all think about this out of court. Is there a way you can streamline? I mean, I know -- I almost chuckle at myself at saying ad hoc committee of Dondero-controlled entities. I know that that sort of sounds, I don't know, unworkable, maybe. Maybe not. I'm not going to read 14 different objections to the UBS settlement that say the very same thing. I'm not going to read a different motion to withdraw the reference by every single defendant in every single adversary that gets filed. This is just not an efficient way to go forward.

So I want you all to think about how you can make this more efficient. You know, it -- a perception could exist that you're trying to carpet-bomb us all with paper, the Court included. I mean, it's my job. I'm going to read everything that's put before me. That's what I do. That's what I'm supposed to do. But it's out of control. So you all think of a way to get it in control or I might impose something. The wheels are turning. What could I do? You know, page limits.

MR. POMERANTZ: Your Honor, this is Jeff Pomerantz. One suggestion might be, following up on what Your Honor made

some comments about, and Your Honor has used the word ad hoc committees, and obviously it's sort of a different animal here. But as Your Honor knows, that every time an ad hoc committee comes in, they have to file a 2019 statement. So I think it would at least provide Your Honor with information, as it would provide all of us with information, to really understand and know, when people are appearing, is it all roads leading back to Dondero, or, as Mr. Taylor says, what are the different constituents? Who are the different people?

As Your Honor has heard from us, we lump them all together because we believe the evidence has shown throughout this case that it all leads -- the road leads back to Dondero. But Your Honor may consider asking them to file sort of the equivalent of a 2019 statement to provide Your Honor with that information under oath that Your Honor could then see, when you get several objections to the same thing, whether you really need to be dealing with them as seven different matters or whether dealing with them as one.

THE COURT: Okay. All right. Well, I'm giving this thought. And again, I'll let you all think about it and make a proposal. But I may or may not accept any proposal you make. And I am leaning towards requiring information to be filed of who owns what, who are the stakeholders. That'll help me understand, is it necessary to have this entity filing a separate objection or motion from this other entity or not?

Can we just have an hoc committee each time?

I don't even think I listed all the law firms. I know a new law firm filed a lawsuit in front of Judge Jane Boyle recently. We've got a hearing on that coming up in June. I mean, and now you're -- I'm hearing there are going to be more. Well, if you don't figure out a way to rein it in, then I'm just going to have to get that list of who are the stakeholders in these entities, under oath, because I don't understand it. I don't understand why we need these many lawyers filing position papers.

So, all right. Well, we're going to adjourn, and I guess I'll see you next Monday, right?

MR. MORRIS: Thank you, Your Honor. Yes.

THE COURT: Okay. Thank you.

THE CLERK: All rise.

(Proceedings concluded at 3:07 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **05/11/2021**

_____ _____

Kathy Rehling, CETD-444 Date

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Can we just have an hoc committee each time?

I don't even think I listed all the law firms. I know a new law firm filed a lawsuit in front of Judge Jane Boyle recently. We've got a hearing on that coming up in June. I mean, and now you're -- I'm hearing there are going to be more. Well, if you don't figure out a way to rein it in, then I'm just going to have to get that list of who are the stakeholders in these entities, under oath, because I don't understand it. I don't understand why we need these many lawyers filing position papers.

So, all right. Well, we're going to adjourn, and I guess I'll see you next Monday, right?

MR. MORRIS: Thank you, Your Honor. Yes.

THE COURT: Okay. Thank you.

THE CLERK: All rise.

(Proceedings concluded at 3:07 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **05/11/2021**

_____ _____

Kathy Rehling, CETD-444 Date

Certified Electronic Court Transcriber

EXHIBIT 41

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	**Case No. 19-34054-sgj-11** Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	Dallas, Texas Friday, June 25, 2021 9:30 a.m. Docket EXCERPT: MOTION FOR MODIFICATION OF ORDER AUTHORIZING RETENTION OF JAMES P. SEERY, JR. DUE TO LACK OF SUBJECT MATTER JURISDICTION (2248)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

For the Debtor:	Jeffrey Nathan Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
For the Debtor:	John A. Morris PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For CLO Holdco, Ltd. and The Charitable DAF Fund, LP:	Jonathan E. Bridges Mazin Ahmad Sbaiti SBAITI & COMPANY, PLLC JP Morgan Chase Tower 2200 Ross Avenue, Suite 4900 W Dallas, TX 75201 (214) 432-2899
For Get Good Trust and Dugaboy Investment Trust:	Douglas S. Draper HELLER, DRAPER & HORN, LLC 650 Poydras Street, Suite 2500 New Orleans, LA 70130 (504) 299-3300

bring causes of action against persons, such as officers and directors or other third parties, if they first come to the Bankruptcy Court and show a colorable claim. They have to come to the Bankruptcy Court, show they have a colorable claim and they're the ones that should be able to pursue them. Not exactly on point, but it's just one of many cases that one could cite that certainly approve gatekeeper functions of various sorts of Bankruptcy Courts.

It doesn't matter which court might ultimately adjudicate the claims; the Bankruptcy Court can be the gatekeeper.

And the Court agrees with the many cases cited from outside this circuit, such as the case in Alabama, in the Eleventh Circuit, and there was another circuit-level case, at least one other, that have held that the *Barton* doctrine should be extended to other types of case fiduciaries, such as debtor-in-possession management, among others.

Finally, as I pointed out in my confirmation ruling in this case, gatekeeping provisions are commonplace for all types of courts, not just Bankruptcy Courts, when vexatious litigants are involved. I have commented before that we seem to have vexatious litigation behavior with regard to Mr. Dondero and his many controlled entities.

Now, as far as the Movants' argument that there was not just improper gatekeeping provisions but actually an improper discharge in the Seery retention order of negligence claims or

annoyance or anything like that. I guess what I'm trying to do is I don't want anyone to mistake the delay in ruling on the contempt motion to mean I'm just not that -- you know, I'm not prioritizing it, other things are more serious to me or important to me, or I'm going to take two months to get to it. It's literally been I've been in trial almost all day long every day since you were here. But trust me, I'm about as upset as upset can be about what I heard on June 8th, and I'm going to get to that ruling, and I know what I'm going to do. And, well, like I said, it's just a matter of figuring out dollars and whom, okay? There's going to be contempt. I just haven't put it on paper because I've been in court all day and I haven't come up with a dollar figure. Okay?

So I hope -- I don't know if that matters very much, but it should.

All right. We stand adjourned.

(Proceedings concluded at 3:35 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **06/29/2021**

_____ _____

Kathy Rehling, CETD-444 Date
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EXHIBIT 42

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	March 1, 2022
	1:30 p.m. Docket
Reorganized Debtor.	
	- REORGANIZED DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING SETTLEMENT WITH PATRICK DAUGHERTY [3088]
	- REORGANIZED DEBTOR'S MOTION FOR ENTRY OF AN ORDER FURTHER EXTENDING THE PERIOD WITHIN WHICH IT MAY REMOVE ACTIONS [3199]
ELLINGTON,	**Adversary Proceeding 22-3003-sgj**
Plaintiff,	
	STATUS CONFERENCE
v.	(NOTICE OF REMOVAL)
DAUGHERTY,	
Defendant.	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For the Debtor: John A. Morris
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

For Scott Ellington: Debra A. Dandeneau
Laura R. Zimmerman
BAKER & MCKENZIE, LLP
452 Fifth Avenue
New York, NY 10018
(212) 626-4875

THE COURT: Okay. And you know that I tend to sometimes share my views just to see if it will spur a fit of reasonableness or encourage people to settle or walk away. I'm pretty exasperated with that attempt in this case. But this litigation is -- I'm going to call it the stalking lawsuit. Okay? Every time -- I don't know how much longer it will be in my court, but as long as it's in my court I'm going to call it what it is, a stalking lawsuit. It is one grown man accusing another grown man of stalking. You know, it's just embarrassing to me, and it should be embarrassing to those involved.

Now, I have read the lawsuit and I have read that Mr. Ellington accuses Mr. Daugherty of driving by his house, driving by his father's house, driving by his sister's house, driving by his office, 143 sightings, he's taking pictures. And you know, if that's true, again, that's embarrassing. If -- I don't even know what to say except this is embarrassing. One grown man accusing another grown man of stalking. Okay? A statute, by the way, that was designed to protect, you know, ex-wives, girlfriends, battered women, from abusive men. You know, gender doesn't matter, but wow. It's just -- I don't know what to say except people should be embarrassed, and so that's what I'm going to say.

I don't know if it's going to make a whit of difference in anyone's litigation posture. But we'll come back on March

29th and we'll do what we need to do on the motions before the Court.

(Proceedings concluded at 3:41 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **03/07/2022**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber